OPERATION OF THE BOARD OF VETERANS' APPEALS

HEARING

BEFORE THE

SUBCOMMITTEE ON
COMPENSATION, PENSION, AND INSURANCE

OF THE

COMMITTEE ON VETERANS' AFFAIRS
HOUSE OF REPRESENTATIVES

ONE HUNDREDTH CONGRESS

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OPERATION OF THE BOARD OF VETERANS' APPEALS

Tuesday, October 6, 1987

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMPENSATION, PENSION,
AND INSURANCE,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:05 a.m., in room 334, Cannon House Office Building, Hon. Douglas Applegate (chairman of the subcommittee) presiding.

Present: Representatives Applegate, Evans, Penny, and Solomon (ex officio).

OPENING STATEMENT OF CHAIRMAN APPLEGATE

Mr. APPLEGATE. Good morning ladies and gentlemen. We are meeting this morning in this oversight capacity to look at the operation and performance of the Board of Veterans' Appeals. The last time we conducted an oversight was October 3, 1985. We had a good hearing then.

Today we will hear testimony from the Chairman of the Board, as well as representatives from some of the various veterans' organizations.

This morning we will address issues concerning the timeliness of the appeals process, backlog of pending appeals, staffing levels at the BVA, and the quality of the appeals function at both the field station and the BVA levels.

I am also particularly interested in finding out why there has been a significant increase in the number of remand decisions by the Board over the past few years.

I find the oversight hearings to be of tremendous value in pinpointing areas where corrective action or other improvements may well be warranted. We will certainly be interested to hear what the service organizations have to say in this regard.

At this time I'd like to recognize the ranking member of the full committee, Mr. Solomon as a substitute for Mr. McEwen of Ohio, the ranking member of the subcommittee, who cannot be here today. So we went to the top, and we have the ranking member of the full committee, Mr. Gerry Solomon of New York.

Mr. SOLOMON. Thank you, Mr. Chairman. I guess I'm always a fill-in and never a starter.

Mr. APPLEGATE. You're always a starter in my book.

OPENING STATEMENT OF HON. GERALD B.H. SOLOMON, RANKING MINORITY MEMBER OF THE FULL COMMITTEE ON VETERANS' AFFAIRS

Mr. SOLOMON. I commend you, Mr. Chairman, for continuing this subcommittee's regular oversight on the operations of the Board of Veterans' Appeals and the VA's appeals process for disability compensation claims. My presence here this morning, as you've stated, is ex officio as the ranking member of the full committee. But because the VA's claims process is so important to veterans, I wanted to be here.

Having served in the Marine Corps myself, I am especially concerned that fellow veterans who have honorably served their country in all of the military services receive every benefit of reasonable doubt in decisions of disability claims—every benefit of doubt.

With the tens of thousands of claims the VA must decide, we realize a few mistakes will be made. That is human. However, we cannot tolerate mistakes which go uncorrected after they are found, as unintentional as they may be. And we cannot tolerate a system which does not do its level best to avoid mistakes in the first place.

The Chairman of the BVA, Mr. Kenneth Eaton, will report on the Board's operation over the past year and answer our questions. I join you, Mr. Chairman, in welcoming Chairman Eaton.

Then we're going to hear from the veterans' service organizations who provide very effective representation for many veterans who make claims for disability. I know the PVA, DAV, VVA, the American Legion, and the VFW will all give us their candid views, which we welcome. It is good to see each of them here this morning.

Mr. Chairman, your colleague from Ohio, Mr. McEwen, who is unavoidably detained this morning, will be coming later in the hearing if at all possible. He has requested that I ask unanimous consent for his statement to be placed in the record.

Mr. APPLEGATE. Without objection, so ordered.

[The prepared statment of Congressman McEwen appears on p. 37.]

Mr. SOLOMON. Mr. Chairman, I've got a Foreign Affairs hearing on imports of products from Iran, which is terribly important, too. I'm going to have to leave about 9:45. So I apologize in advance to the veterans' organizations when they'll be testifying.

Thank you very much, Mr. Chairman.

[The prepared statment of Congressman Solomon appears on p. 39.]

Mr. APPLEGATE. Thank you very much, Mr. Solomon. I understand that. That is a very important place to be at this time.

We just have one other member. Mr. Evans is here. Mr. Evans, would you have anything that you would like to add?

Mr. EVANS. Yes, Mr. Chairman.

OPENING STATEMENT OF HON. LANE EVANS

I want to thank you for calling this hearing on the Board of Veterans' Appeals.

I think we both share a concern regarding the Veterans' Administration's treatment of veterans as it relates to the processing of claims and the need for judicial review. I strongly feel that the VA claim system is not perfect and that there are veterans and their dependents that are being denied the compensation to which they deserve. This point was well made in the recently aired segment of ABC's program "20/20." It is clear that the procedures and activities of the BVA are a strong consideration in determining the need for judicial review of our veterans.

Finally, judicial review is needed to give veterans the opportunity to seek an independent review of the Veterans' Administration's decisions which have denied veterans compensation they seek. I believe our veterans who have sacrificed so much for our country are entitled to this fundamental protection, and that is why I have introduced H.R. 639 to remedy this problem.

I look forward to today's testimony from the veterans' service organizations and from the VA regarding this very timely matter.

I will have several questions. I do want to thank you for conducting this hearing.

[The prepared statement of Congressman Evans appears on p. 42.]

Mr. APPLEGATE. Thank you, Mr. Evans.

We will get right into the witnesses. The first witness that we have today is Mr. Ken Eaton, who is Chairman of the Board of Veterans' Appeals of VA, accompanied by Mr. Jack Thompson, Assistant General Counsel. Gentlemen will you please come right to the table. We welcome you back again. It is always good to see you, and we look forward to hearing from you.

STATEMENT OF KENNETH E. EATON, CHAIRMAN, BOARD OF VETERANS' APPEALS, VETERANS' ADMINISTRATION; ACCOMPANIED BY: JACK THOMPSON, ASSISTANT GENERAL COUNSEL; RON AUMENT, SPECIAL ASSISTANT, MANAGEMENT; JAN DONSBACH, SPECIAL ASSISTANT, LEGAL; AND DICK STANDEFER, DEPUTY VICE CHAIRMAN, QUALITY REVIEW PROGRAM

Mr. EATON. Thank you, sir.

I'd like to introduce a few people here that I've brought with me in case the questions get too difficult. They might be able to help out.

On my far left we have Ron Aument, who is a special assistant involved in management at the Board of Veterans' Appeals; next to him we have Mr. Donsbach, who is a special assistant in legal matters; on my right is Jack Thompson, as you've already mentioned, from General Counsel; and on the far right is Dick Standefer, a deputy vice chairman who really knows about our quality review program in case we come into that.

With your permission, sir, I'd like to just briefly go over my prepared statement. I don't want to go over the whole thing, but touch on a few things that I think are of particular significance and then we can go on from there. Is that what you would prefer?

Mr. APPLEGATE. Yes, that is perfectly okay, because your testimony will be made a part of the record.

Mr. EATON. Thank you.

I certainly appreciate the opportunity to meet with you today and discuss the operations and the performance of the Board of Veterans' Appeals.

One of the things of interest today, I am sure, is the response time at the Board. That has to do with how much time it takes to get a case out from the time it first arrives until we have it completed and send it back. At the time we prepared our statement we reported that it was 135 days. Actually, there has been some improvement in that just in the last few weeks, and we are really down to 128 days right now, which we consider to be well within the normal range.

We carry approximately 15,000 decisions at the Board at any given time.

We have very little, in a sense, added backlog. The cases are worked on as soon as we get them, and any time we can get the cases out within 100 to 125 days we consider ourselves right on the margin, right on the cusp, doing everything we can as far as timeliness is concerned.

We did have a little problem last year having to do with our employment level, as everybody probably did. Because of the Gramm-Rudman and one thing and another we had a drop in our employment level, and we brought it back up now. We are back to our Congressionally-staffed limit, and we've got them trained, and we're able to keep up to date now with the cases as they come in.

In the field the average response time right now seems to be running around 280 to 290 days. I would explain that there are several reasons for that. There are a great many little steps that need to be taken in the field before it gets to the Board. There are many delays that are not the fault of the Veterans' Administration at all, having to do with the requests for hearings, delays on the hearings, the examinations for the development. So you add those two together—that 130 days and 287 days—and you're going to get a little over 400 days from the time a person files his notice of disagreement until he gets a final decision from the Board.

We have been operating in the last 2 years with an intensive quality review program, and we've been putting a lot of emphasis on that. I'd like to just mention briefly that we have several objectives in that. I believe we're doing very well with it. We want to assure that all appellate decisions are accurate and legally sufficient. We want to assure that they convey the findings clearly and effectively with compassion and sensitivity towards the veterans and their dependents.

We want a good level of consistency among the decisions in the Board sections, and when I refer to "consistency" I'm talking now about the policies of the Board, the legal problems, and consistency in that regard. We cannot get consistency in judgment matters having to do with fact finding. People differ on facts, and we will have a great deal of variation having to do with deciding facts. But having to do with interpretation of the law and general policy we have maintained, I believe, very good consistency.

And then we want to certainly maintain the Board's decision-making independence.

Now, in addition to our quality review program, the question has arisen having to do with the remand rate. I think, as my prepared

statement will show, there are a number of reasons that we think may be causing this. It is difficult to be sure—to say the least we are making assumptions here. But we have done some studies and run a few computer runs of various sorts. We have found, for example, that there has been no change in the percentage of allowances in the field and at the Board than there were a few years ago. So it doesn't seem that that has anything to do with it. In other words, as I recall the figures, the Department of Veterans' Benefits will, as a total, make over 5 million adjudicative decisions a year, and out of that we will overturn about 5,000, and it seems like that runs about the same.

On the other hand, if you will look at the figures that we prepared you will see that while we have a significant increase in the remand rate, there has been almost no difference in the allowance rate in benefits granted following remand. In other words, we can send the case back to the regional office, they do some additional development, and then there is a certain percentage—20, 25 percent, sometimes as high as 30 percent of those cases are allowed in the field. Well, that has not changed. There is still that same allowance rate in the field on remands. So we don't feel that our remand rate increases are due to any frivolous remands by the Board. We seem to be on target as far as that is concerned.

What are the reasons? Well, we think that one of the reasons has to do with the service organizations. They are better trained. They are stronger advocates. They realize that if they can't get an allowance the next best thing is a remand, so they push hard for those remands. We feel that might have some affect on our remand rate.

Another area has to do with the aging situation of the veteran. He is further away from service now than he was years before, and as the facts get a little more hazy the Board, perhaps, will demand a little more development than they used to, and get more remands from that standpoint.

There is the area of unusual issues that we run into, and we've noticed that in certain types of issues the remand rate is higher, and PTSD happens to be one of them. We seem to remand a lot of those, and there are a lot of those coming before the Board these days.

Another one that I recall has to be loan guarantee. We always had a high remand rate on loan guarantee, but the number of those cases has tripled so that that would increase our overall remand rate.

Other areas that seem to require a great many remands to develop the cases further include waiver of overpayments, Agent Orange cases, radiation cases, and POW cases. I think that might have something to do with the increased rate. We are trying to be sure that those special cases get all the treatment that they need.

Then, as we all know, there is the Federal court system that is very concerned about due process. There is the situation about judicial review. We feel that as a result of that we've got to be careful to see that the Board does everything that it can, and perhaps that has had some influence on us and extended our remand rate a bit.

And, of course, we've submitted a table in the statement that shows a lot of information, and I am sure you'll be able to get something out of that.

This is just a brief summary, of course, but I am happy to answer any questions you might have having to do with the Board of Veterans' Appeals. I am ready for any questions you might have, sir.

[The prepared statement of Mr. Eaton appears on p. 43.]

Mr. APPLEGATE. Okay, I thank you for your testimony, and we will have an opportunity to scrutinize very carefully your prepared statement for the record.

You know, earlier this year we held a hearing on timeliness of claims and processing in the regional offices, which has suffered a loss of some 30 percent in personnel in the last 3 years with no reduction in the case load. I have no doubt that the shortage of personnel has had an effect on the increase in the remand appeals; is that correct?

Mr. EATON. It's difficult for me to assess that too well, but I will certainly admit that if they have limited resources there, and they're short of personnel, there would be a chance that we would increase our remand rate when they do not develop the cases as fully. If they rush their cases, why we would have more remands.

Mr. APPLEGATE. Well, I hope that you'll be able to work with Mr. John Vogel in the future to try to pinpoint the reasons for it and work our some kind of a reasonable compromise or workable solution to it. I am sure that you will.

[Subsequently, the Veterans' Administration submitted the following additional information:]

The Board of Veterans Appeals will continue the investigations that have already been initiated into the reasons underlying the recent trends of increasing rates in Board of Veterans Appeals remand decisions. The Chairman of the Board of Veterans Appeals plans to meet with the Chief Benefits Director to lay the ground work for joint efforts between the Board of Veterans Appeals and the Department of Veterans Benefits to resolve this situation.

Let me ask you this: one of the organizations has a concern—they will be here today—about what they term "required production quotas" for your junior staff attorneys to meet before they can be promoted. They make the following comment, "While we cannot be certain that production quotas alone are used to reward or penalize the VA staff attorneys at the Board, we have to believe these quotas are a compelling factor." And they also express concern that attorneys trying to meet the specified production quotas may be less inclined to appropriate research, and thus have a lower quality decision. Do you have any kind of a comment that you can make on that?

Mr. EATON. Yes, sir, I certainly do. It is true that we use production goals and quotas for our attorneys, and we feel that it is very important to do that in order to get the work done that we have. However, we watch closely to see that the quality of their work is also at a high level. If the quality of their work—and that includes the amount of time and preparation and research that they do—if that is down, that is another basis, an equal basis, for their not being promoted, or not getting a bonus, or whatever it is. So we try to get an even balance between our productivity and our quality.

Mr. APPLEGATE. Do you assign quotas?

Mr. EATON. By that, yes, in a sense we do. By "quotas" we are talking about the attorney staff, now, not—and having to do with that, they have what we call—it's 100 percent production. There

are many people who are well over 100 percent, and there are some who are under 100 percent. We do ask them, in order to get promoted, to produce what we call 100 percent. We also ask them to get a quality of at least—I think it's 90 percent, just off-hand. That's the way we do it. The highest you can go is 100 percent in quality. You can't get any higher. In production there are a few people who can do 200 percent, even. But you can't get higher than 100 in quality.

So we do have those categories that we use as an objective standard for determining the abilities of an attorney and whether or not they should get promoted. Yes.

Mr. APPLEGATE. Well, let me ask you this: there have been allegations, also, that there is too much emphasis on productivity that has been made, and that year-end bonuses are tied to the number of cases decided. What do you say to that?

Mr. EATON. Well, that's true.

Mr. APPLEGATE. That's true.

Mr. EATON. We do that. It's a relatively small amount of money, but it is money, and all money counts, as you know. We use that as an incentive for high production. We need high production in order to get all the cases done. The fact that we've always done it is not a good reason, I understand that. But we have always had high production, and we encourage that through this bonus situation.

We do require quality as well, of course, but we need those cases in order to get the cases out so we don't have a big backlog.

Mr. APPLEGATE. Okay, Ken, let me ask you this: a couple of years ago when we had the hearings we were talking about space problems. Tell me about what has been done to meet those problems.

Mr. EATON. Well, the best I can recall we are just where we were then, and that is that they just cannot find the space for us in the building that we're in. We have 21 sections at the Board of Veterans' Appeals, and we only have 15 of them in our building, which is the same as we had 2 years ago, as best I can remember. The other six are in an annex—we call it an annex, another building—not far away. Unfortunately, we are going to have to move from that building. GSA is going to kick us out because of the fire codes or something like that, and we have to move into another building. We are looking into where to move for the annex. We cannot get them in our building; there just isn't the room.

Mr. APPLEGATE. What did you have in mind a year ago, or 2 years ago, when you said it would take a year, or perhaps 2 years, before you would be able to correct the situation and get the space that was necessary?

Mr. EATON. Perhaps I've forgotten, but I think what I had in mind was that there were some sections, either in the VA or some outside groups that were in our building—it's called the Lafayette Building or the Export/Import Bank Building—that I thought might be moving. I had been promised that if they did move that I would have first crack at that space. Well, in the last 2 years I've realized that there has been virtually no hope in that at all, and so I——

Mr. APPLEGATE. What does this do to the quality of your service?

Mr. EATON. Well, I would say very slight. There is a little diminishing factor. It is a little difficult on the morale of those sections

that are out in another building. There is a little problem having to do with the transportation of cases, a little problem having to do with them coming in and out for the hearings, but I would consider that relatively minor, I really would.

Mr. APPLEGATE. Okay. I guess this would be a question for counsel, Jack Thompson. It's been charged that the legal opinions of the General Counsel are colored by political and budgetary considerations. What would you say to that, Jack?

Mr. THOMPSON. Well, I'm very pleased to have the opportunity to respond to that. I've worked at the General Counsel's Office for about 10½ years now, and during that 10½ years my time has been spent exclusively in the staff group that issues all the opinions regarding the compensation, pension, and insurance programs. During that entire period of time I can honestly say—I'd be glad to say it under oath—that our opinions have never been guided by political or budgetary considerations.

Mr. APPLEGATE. Well, I guess that is straightforward enough.

Well, I thank you very much. I think that will be enough from my end. I appreciate your answering the questions, and I'll turn the additional questioning over to my good friend from New York, Mr. Solomon.

Mr. SOLOMON. Thank you very much.

Ken, thank you very much for your testimony.

One of the organizations has stated that it is improper for your staff attorneys to consult with physician members from other panels when researching a medical question. They consider this supplementing the record and say it doesn't give the claimant an opportunity for rebuttal. What's your feeling on that?

Mr. EATON. I heard that, and I was very surprised. It's the first time I've heard that type of a criticism. We do that very much. We consult among ourselves. The attorneys consult with various doctors. They have a doctor that they work with in a section, but that doctor might not be the best person to talk to having to do with the stomach or the back or the heart, depending on what it is. So they do occasionally go down the hall and chat with other doctors. We encourage that. We don't think that should be a matter of record or a piece of evidence that needs to be formulated in such a basis as to have to be sent out, you know, for everyone to see before we make a decision. We don't put that in the claims folder. It is not a piece of evidence. It is just in-house consultation.

I would emphasize that whenever we do go outside the Board of Veterans' Appeals, even to different departments or staff offices in the VA, for example General Counsel, or the Department of Medicine and Surgery, or to the Armed Forces Institute of Pathology or to an independent medical expert—whenever we go out for an opinion from any of those of course we follow the procedure they're talking about: we send our copies to the appellant and the representative and give them an opportunity to respond. But we don't do that for in-house consultations. I don't think that would be appropriate. It would inhibit the flow of information, in my opinion.

Mr. SOLOMON. Okay. Ken, I was somewhat concerned with these time elements that you put out concerning the regional offices and your own Board of Appeals in acting on claims. You said—let me just say it is my feeling that the Board of Appeals is doing their

job. But when you talk about the regional offices taking an average of 287 days, and then you add to that 130 days I think you said——

Mr. EATON. That's true.

Mr. SOLOMON [Continuing]. For the Board, that's over a year. Can you give us a brief summary of exactly what happens? In other words, I think you're going to tell me that there's a manpower problem at the regional offices, and probably that's correct. But maybe you can just give us a brief summary of what happens when an appellant's case file is received by the Board of Appeals. Why does it take that 130 days, and just briefly touch on why it takes 287 days? What's the major hang-up?

Mr. EATON. Well, I would have to point out that unless my memory doesn't serve me correctly, there has been no real drop as far as the regional office is concerned in the amount of days. If they have a shortage of personnel, I don't think it's reflected in this 285 days. Now, that may sound like a lot, but there is a lot to be done in the development of a case when a person sends in his notice of disagreement. Many of those delays they can't do anything about. What I'm suggesting is that for many, many years it has taken that long, and I don't know that there is any way to improve it.

Now let me just briefly discuss that for a moment. A veteran files his notice of disagreement. It comes in to the regional office, they look it over, do a review to see what they think is going on there. This takes a little bit of time. If they see that their decision seems to be appropriate and the notice of disagreement, as far as they are concerned, is not correct, they prepare what is called a statement of the case. Now, that takes a little time.

Mr. SOLOMON. How long has it taken up to that point? Just an average.

Mr. EATON. Approximately 60 days from the time the notice of disagreement is received, they pull in the file, they review it, prepare a statement of the case and send it out. That runs right about 60 days.

Now, another 55 days takes place from the time the veteran gets his statement of the case—and mind you, there is nothing the VA can do about this—from the time the fellow gets the statement of the case until he sends in his substantive appeal. That is all his time. The VA is just waiting until he does something there, you see. That's another 55 days.

Now, when he sends in his substantive appeal, now it is back in the hands of the VA, and they've got to move on that. The problem is that then there are requests for hearings, there are requests for additional examinations, additional development—and believe me, the regional office gets criticized a great deal if they do not further develop that case and do the right number of hearings and the right number of examinations. All these things take time.

Now, from the time of the substantive appeal until it's ready to come to the Board of Veterans' Appeals—let's see if I've got this right here—I'm reading—well, I see 172 days.

Mr. SOLOMON. On top of the 60 and the 55?

Mr. EATON. That's right. What do those three add up to? Am I close to 287, I hope?

Mr. SOLOMON. Yes, you are. You're right on the button.

Mr. EATON. Is that right? Okay. Now, the 172 days does sound—the others seem very reasonable to me. The 172 days——

Mr. SOLOMON. That's about 6 months.

Mr. EATON. Yes. That seems a little long, but it's because of all these things about the hearings and the development and the exams. And then, of course, they look it over again before they send it back to us, you know, for the Board to look at it. But that's where all that time takes, and if you try to shorten that too much I think you'll be doing a disservice to the veteran. It's necessary, I'm afraid.

So I don't really think that the length of that time has to do with a shortage of DVB personnel. Now, here I am talking about DVB. That's really a little more on Mr. Vogel's line, but that's my opinion.

Now, once it gets to the Board, we get the case in and if there is no hearing here and if the service organization at the Washington level gets right to it and gets it out, we can get it out in less than 90 days, perhaps even 80 days, something like that. But unfortunately, with requests for hearings here, and sometimes the service organizations hold the case themselves for several months, those are delays that we cannot prevent, and that's why the overall average gets up to 130 days or so.

Mr. SOLOMON. Ken, thanks very much.

Mr. APPLEGATE. That's very interesting. I thank you for that line of questioning, too.

Mr. Evans?

Mr. EVANS. Thank you, Mr. Chairman.

Going back to the in-house consultation, would this be allowed in the VA if the Veterans' Administration was subject to the Administrative Procedures Act? Or do you know any agency that allows similar in-house consultation?

Mr. EATON. Yes. Now, I don't know the exact ruling about the administrative procedures, and I noticed that was mentioned in there. But I do know for a fact that, for example, in Social Security that they do discuss among the doctors without any procedures. There is no statement being made. It's just a discussion, an in-house consultation. They do that. I would think that all agencies would do that. But if they want a statement that they want for the record, then I think that would be another matter. If they're going to take that statement and have him write it out and sign it and put it in the record for proof of what they're doing, then I think that is a different problem, then I think they should notify the veteran and all of that.

Mr. EVANS. Going back to the productivity standards: is it true that basically you need at least 100 percent production level to be promoted?

Mr. EATON. Yes.

Mr. EVANS. All right. It wouldn't matter that if you were consistently below 100 percent production level if you had a high quality rating?

Mr. EATON. No. I see where you're coming from. It is important, of course, for high quality rating. But you've got to draw the line somewhere. We have to draw it. Now, whether it is at 80 percent production, 90, or 100, the problem is this: I've seen a number of

attorneys who for one reason or another will have a quality of 100 percent and virtually have zero production. Now, you can't handle that. There is no way that we can deal with an attorney who only does one case every 2 weeks, but the quality is great. We're not going to promote an attorney who does that because that attorney is not, in our opinion, doing his or her fair share.

Mr. EVANS. How much is paid in bonuses to Board of Veterans' Appeal members last year? Do you have any of those statistics with you?

Mr. EATON. How much money did we pay them?

Mr. EVANS. In bonuses.

Mr. EATON. I would think it was somewhere around $60,000?

Mr. AUMENT. To Board members it was a little bit less, I'd say $40,000 to $45,000.

Mr. EATON. It was $40,000 to $45,000 spread out among all the Board members. Now, there were some bonuses for attorneys, as well.

Mr. EVANS. What was the highest award of bonuses last year?

Mr. EATON. There was one Board member who had higher than any other by quite a bit. We really gave him a—what was it?

Mr. AUMENT. I think it was about $5,000.

That was the high one.

Mr. EVANS. What would be the lowest?

Mr. EATON. Oh, about $500, I think.

Mr. EVANS. Okay. And that's for Board of Veterans' Appeals members?

Mr. EATON. Yes.

Mr. EVANS. As opposed to staff attorneys?

Mr. EATON. Yes.

Mr. EVANS. What would be the bonuses at the high level and low level—ballpark figure if you don't have it exactly—for some of the attorneys who are at least meeting 100 percent production levels or greater?

Mr. EATON. The difference there—sometimes our bonuses are based on percentage of salary, which affects this whole thing. But there are times we give attorneys what we call a "extra within grade," which is paid over a period of years as opposed to one lump sum, so that kind of complicates the matter.

Mr. EVANS. But we're talking about bonuses only for production level standards?

Mr. EATON. Well, you cannot—if you do not have good enough quality you are not eligible for the production bonus.

Mr. EVANS. Even if you are over?

Mr. EATON. Yes. If a person did 200 percent production—which would be fabulous, you know, and would ordinarily deserve it—if he has a quality of 50 percent or 60 percent we would not pay him a dime.

Mr. EVANS. All right.

Mr. EATON. As a matter of fact, we would ask him to leave, if you want to know the truth.

Mr. EVANS. All right. Can you give me a ballpark figure on what the highest and the lowest might have been for someone who at least made the minimum of, I guess, 100 percent production?

Mr. EATON. Oh, we wouldn't give any bonus to an attorney who made 100 percent production.

Mr. EVANS. Okay.

Mr. EATON. He would have to have at least 125 or 130 percent in order——

Mr. EVANS. What would he get?

Mr. EATON. He might get around $2,000 or $3,000 or somewhere around there. It might be $1,000. But it would not be up to $5,000, in other words.

Mr. EVANS. It would be from $1,000 to $2,000, assuming he made at least 125 percent? Now, let me ask you: what would that person's salary be—yearly salary?

Mr. EATON. Well, the grades range from grade 9 to grade 14 on the attorney staff. That's quite a range. The salary range must be—I don't know exactly, but GS–9 to GS–14, with the in-steps, you know, I suppose it must run from $21,000 to $45,000 or $50,000.

Mr. EVANS. So it is possible for an attorney making $15,000 a year potentially to make $3,000 more at the end of the year, basically?

Mr. EATON. Well, no. But the reason for that is—I've got to go back. The reason why that brand new attorney couldn't do it is he wouldn't be eligible. I didn't get into that, but if he's that new and that low a salary he would not be eligible for a bonus.

One of our rules is that he's got to be doing well enough to be promoted. If he's doing well enough to be promoted we will not give a bonus.

Mr. EVANS. All right. But while it may not be a large amount of money, really, by Washington standards, it could be a large percentage of the person's yearly salary, giving him incentive to at least produce at that level.

Mr. EATON. Well, you say "large,"—perhaps 5 percent, or something like that, of his salary—4 percent.

Mr. EVANS. Mr. Chairman, I have many other questions. I know we have some other questions from Tim Penny and others. I would like to come back if I could.

But if we could get, for the record, the bonuses paid to the Board of Veterans' Appeals members last year, and I think—we don't need it today, but if you can get it to us. And I'd say maybe—I don't know how many attorneys we're talking about, but GS level 14. Would that be unduly burdensome?

Mr. EATON. No, no. Not difficult at all. We have that right at hand.

Mr. EVANS. All right. If you could submit that to us by letter, or whatever, I'd appreciate it.

[See Board of Veterans Appeals Board Member and Staff Attorney Performance Awards for Evaluation Year ending March 31, 1987 on p. 53.]

Mr. EVANS. I'd like to ask some more questions, but I yield back my time.

Mr. APPLEGATE. All right. We'll let Mr. Penny ask some questions if he has some. Mr. Penny?

Mr. PENNY. Thank you, Mr. Chairman.

I want to follow in somewhat that same vein. Do you have a general idea of the experience level of the attorneys that are on the

Board of Appeals? He's talking about specific grades and how many are in each grade. Recognizing that you may not have that detailed information with you this morning, do you have some general idea of the length of tenure that your attorneys fall into? How many are in which categories, like 1 year to 5 years, 5 years to 10?

Mr. EATON. We have—this will be round figures, to say the least—but I would say we have 30 to 40 attorneys in grades 9 to 11, with 1 or 2 years of experience; we would have another 50 or 60 in grades 12 and 13 with 3 to 5 years of experience, generally speaking; we have another 100 attorneys in grades 13 and 14—I guess I covered 13 before, but somewhere in the 13 to 14 range that have 6 or more years, up to even 15 or 20 years of experience at the Board of Veterans' Appeals. These are staff attorneys now, not Board members.

Mr. PENNY. And how do you distinguish there? Isn't the Board made up of a couple of attorneys and a physician?

Mr. EATON. Yes.

Mr. PENNY. And all together you've got 65 Board members, and they are divided into 21 divisions?

Mr. EATON. That's right.

Mr. PENNY. So you've got three per division. How about those Board of Appeals members? How do the attorneys in their level or experience, or years of experience, shake out there?

Mr. EATON. Now, these attorneys are the Board members. They are GS-15 level attorneys——

Mr. PENNY. And, again, these are attorneys that you didn't account for in your previous response?

Mr. EATON. Right. They will all have—well, there might be one—no, there's no exception, at least now—they usually have 8 to 10 years of experience before they can make the Board of Veterans' Appeals.

Mr. PENNY. And when you say "experience," is that all within the department?

Mr. EATON. Within the Board of Veterans' Appeals, yes.

Mr. PENNY. So they have had to be on the staff handling the reviews for that period of time before they have an opportunity to be promoted, if you will, to the Board?

Mr. EATON. Yes. Now, I would say that in the last 20 years there has been perhaps one or two exceptions to that—or maybe even three or four in 20 years, but it's very rare.

Mr. PENNY. By and large they have to have that level of experience before they move up.

Mr. EATON. That's right. Now, of course there are some who have 20 and 30 years, too.

Mr. PENNY. Are most of the staff-level attorneys you bring in—you referred to some of them, 40 or so, as having just a couple of years of experience; another 40 to 60 are 3 to 5 or 6 years experience; and then 100 or more have greater experience than that. Are most of the folks that you bring in new to the profession, or have they practiced on the outside or with some other agency before you bring them in? When you say "a couple of years experience with the VA," is that a couple of years of experience, period, or have they been somewhere else, typically, prior to coming to the VA?

Mr. EATON. Well, when I meant a couple of years of experience, I meant that when they're grades 9 and 11 they've had only 1 or 2 years of experience at the Board. Now, when they first come to the Board, about 50 percent of those that come to the Board will have had some type of prior experience as a lawyer.

Mr. PENNY. And would they still begin, though, at that very low——

Mr. EATON. Ordinarily, yes, at the nine. Now, once in a while, in an exceptional situation, we allow a person to start as a grade 11, but ordinarily as a grade 9. That's a part of the market demand.

Mr. PENNY. So as many as half of them that come to the Board may have had previous experience. But would you say that that previous experience would be somewhat limited, no more than a couple of years?

Mr. EATON. Ordinarily. There are exceptions to that. Sometimes we'll get a person in the 50's who wants to start his or her career all over again. Maybe that person was in the military, and we'll start him or her at a grade 9.

Mr. PENNY. Are you generally satisfied with the caliber of individual that you're able to attract to both—well, attract to an attorney's position within the VA?

Mr. EATON. Yes. The reason I say that is that I have to compare it with 10 or 15 years ago when the caliber and the talent that we were able to attract was much poorer.

Mr. PENNY. I guess that gets to the pay levels. Are you competitive? It doesn't sound to me if you're paying some attorneys $15,000 that you're competitive with anything in the private sector.

Mr. EATON. We're not really that competitive. But the reason why we're able to get good people is because there are so many people looking for work, to be honest with you. We're very tough on grades and that sort of thing, but we're able to get away with it now and still get good people because of the numbers of lawyers looking for work.

Mr. PENNY. Did you have any statistics on how many of the staff attorneys or attorneys that are now on the Board would have had previous military experience?

Mr. EATON. I'm sure we have that. I don't recall offhand, but it is high because we do emphasize that.

[See Veteran Status of Board of Veterans Appeals Members and Staff Attorneys on p. 54.]

Mr. PENNY. Mr. Chairman, my time has expired.

Thank you, Mr. Eaton, for your testimony.

Mr. APPLEGATE. Thank you, Mr. Penny.

Let me just ask one thing here. I think the attorneys begin at a GS–9, correct?

Mr. EATON. Yes.

Mr. APPLEGATE. And, as I understand, within each level you have about 10 steps?

Mr. EATON. Yes. A person ordinarily will work 1 year at the GS–9 level, and will be promoted to the GS–11 level if his or her production and quality are adequate. That attorney will move each year from GS–9 to GS–11 and on through the first three or four grades rather rapidly the first 3 or 4 years of employment.

Mr. APPLEGATE. That's a promotion, though.

Mr. EATON. Yes, that's right. That's a promotion, which is usually given after 1 to 2 years in grade if the person's quality and production are adequate.

Mr. APPLEGATE. Well, let me ask you this, then—maybe sort of an average, and I don't know whether that's possible to do: how long does it take, on an average, for an attorney to go from 9 to the 14 level?

Mr. EATON. I would say the average is somewhere from 6 to 8 years. There may be some who could do it faster than that. The 14 is a—we call it a "journeyman" grade, but it's a little tougher to reach that 14. Some stop at 13; a few stop at 12. But some stop at 13, and then others make it to 14, so it varies a little.

Mr. APPLEGATE. How much of loss do you have of attorneys?

Mr. EATON. Our turnover has been very low the last few years. Again, it goes back to this supply and demand situation. There are just not too many jobs out there for lawyers any more, and that has been helpful to us as far as the turnover, and as far as getting good talent.

Mr. APPLEGATE. The pay scale from 9 to 14 would range—what?—mid 20's to high 40's, mid 40's?

Mr. EATON. I would say that's about right.

Mr. APPLEGATE. Does that seem like an attractive salary for an attorney who's gone through 6 years of college and could be a professional man out there making big bucks?

Mr. EATON. Well, that, of course, is a matter of preference depending on a number of things. You get a young fellow out of a nice law school that works for a fancy law firm, and he's going to eventually make a lot of money. But he's going to have a lot of hard extra work and a lot of hours that he doesn't have to put in at the Board of Veterans' Appeals. So there is a little trade-off there.

Mr. APPLEGATE. Well, of course this looks good on his resume, too, if he's young and he can go out and do it. I was just wondering about the loss that you get from that? But then, of course, you wouldn't know that anyway.

Well, okay. That's all I wanted to ask. Mr. Evans had some additional questions that he would like to ask.

Mr. EVANS. Are the productivity standards based on statute regulations or personnel standards or a union agreement?

Mr. EATON. No. I'm trying to think if there's something in there. There is some general information, but no, I would say there's no criteria.

Mr. EVANS. What authority exists, then, for awarding these bonuses, and who sets the amount?

Mr. EATON. Oh. Now wait a minute. We've got to have some authority. I see what you're driving at. Yes, there's authority in personnel manuals, I assume, having to do with granting bonuses for extraordinary work. I thought, though, that you were asking if we had it spelled out at the Board of Veterans' Appeals as to what the criteria was for receiving those awards; we do not have that spelled out.

Mr. EVANS. There is no set criteria, then? There's just some general authority to award these bonuses? Is it discretionary on an individual?

Mr. EATON. Well, let me qualify that slightly. There is none having to do with the Board members. There are some criteria having to do with the attorneys, and there are minimum criteria, not that there may be a presumption in favor of them, but they don't have to get it just because they meet a certain minimum.

Mr. EVANS. Okay. Now, as far as attorneys that is set by regulations in the VA?

Mr. EATON. These criteria, you mean? No, you see, because we have our own standards that no one else has, like 100 percent production, let's say, or 90 percent quality. Well, that wouldn't mean anything to anybody else, and nobody would have any regulations for those.

Mr. EVANS. I mean, there must be some place where this criteria is spelled out. That's what I'm driving out.

Mr. EATON. The criteria for bonuses, you're talking about, as opposed to the criteria for production and quality? Well, we do have in our MBVA Manual something that says something along this line, that if you have a quality of at least 95 you will be considered for a bonus. If you have——

Mr. EVANS. Who makes, then, the award of the bonuses?

Mr. EATON. I do.

Mr. EVANS. You do? For every individual you have recommendations come up——

Mr. EATON. Yes. Oh, yes.

Mr. EVANS. So recommendations based on this kind of lose criteria, I guess, there's no set mathematical formula. Recommendations coming from that individual's immediate superior all the way up through the——

Mr. EATON. Ordinarily. Although let me clarify that a little bit. We have a list of GS-14's and GS-13's—usually they're the only ones that are eligible—and we have a list for the full year as to what their production and what their quality is. I can go down that—well, I have a little committee that meets and we examine that, and if an individual—let's say John Doe—is ranked fourth out of a hundred or whatever it is, the only question, if he meets this criteria, if his production and quality are high, he will get the bonus unless there is some other reason he's not eligible.

Mr. EVANS. What would be some of those reasons?

Mr. EATON. Well, that he recently was promoted, or that he received a bonus the prior year. That is an in-house rule. We do not give a bonus out 2 years in a row.

Mr. EVANS. But the ultimate award, besides these reasons, is basically left up to you?

Mr. EATON. Yes.

[Subsequently, the Veterans' Administration submitted the following additional information:]

STANDARDS AND CRITERIA FOR THE AWARD OF BONUSES TO STAFF ATTORNEYS

The Board of Veterans Appeals Manual, MBVA-1, Part I, Chapter 3, and MBVA-1, Part II, Chapter 2, generally describes the Board's performance evaluation system as it applies to staff attorneys. Performance standards required for attorney eligibility for bonuses and for career ladder promotions are explicitly stated in these references. (Copy attached) Prior to their implementation, these standards were reviewed by the VA's Office of Personnel and Labor Relations to ascertain that the contents were consistent with all applicable laws, regulations and policies. Also, the Ameri-

can Federation of Government Employees was afforded the opportunity to review and provide comments on the standards.

[See p. 58.]

Mr. EVANS. Okay. Now, how are case processing time standards set? For example, who determines that it takes 351 minutes to do an apportionment case?

Mr. EATON. Well, when I first worked at the Board of Veterans' Appeals, around 1961, we had standards just like that. They went back to a time—and they have been modified from time to time—but they go back to a time—I remember a fellow by the name of Murry Farmer who conducted a study where everybody had these little 3 x 5 cards and they would jot down the amount of time it took on an individual case. I remember doing it myself 25 years ago or so. You do these studies, and then you try to find out what kind of time would be appropriate for an individual type of case. That was done many years ago. Now, there have been a few revalidation studies, modifications, changes.

Then what you do, if you assign a certain value, then you watch over a period of time and see what people do with that type of case, and if it turns out that an individual takes those cases and gets them all out much faster than that, why then you're going to look into the possibility of adjusting it.

So it is a matter of experience plus an initial factor in setting up some time.

Mr. EVANS. Well then let me ask you how it is that cases are assigned. There is an allegation that GS–14 attorneys are able to get the so-called "thinnest" cases, the so-called "blades." If that is true, wouldn't that affect their ability to produce cases? That these cases, being the thinnest cases, would be the easiest to turn over?

Mr. EATON. It could be. I say that it could be because it's not always true. Sometimes you get a thin case and it is a son-of-a-gun, and a fat case might be a real easy one. But still, on the average you are absolutely right. The thinner the case, the chances are it's going to be a faster case to review.

The way we do that is: we have each section, and the chief member of each section is responsible for assigning the cases in that section. He will do it depending on a number of factors. He will take into consideration the grade level of the attorney. Now, that doesn't mean that the GS–14 will always get the thickest or the toughest case, but he will try to apportion that depending on a number of factors. If a particular senior attorney has been doing a lot of tough cases, he might give him an easy case. It is his responsibility to do that. Sometimes we have a little problem with that, but if it gets out of hand—which it can happen—why then it's up to management to straighten it out and see that that senior attorney isn't getting too many of those thin cases.

Mr. EVANS. All right. That's a section chief, did you say?

Mr. EATON. Yes. That's right.

Mr. EVANS. Is is possible that within the discretion that a section chief has that he could favor someone by giving him a number of blades or——

Mr. EATON. Anything's possible. I talk about this sort of thing from time to time with the chief members, and I ask them to be sure that they don't do that sort of thing. But with any supervisor

you can never eliminate the possibility that from time to time they're going to favor one person over another in one way or another. It can happen.

Mr. EVANS. Well, finally, let me ask you if anyone, including yourself, has ever heard of the phrase "coffin tester"?

Mr. EATON. No, I've never heard that before. That, to me, is a new term. I've certainly heard "blades," but I don't know where they came up with that. Somebody in my organization probably said that to somebody, but I've never heard of that.

Mr. EVANS. Has anyone else on the panel ever heard of that term?

[No response.]

Thank you. I appreciate it.

Mr. Chairman, I yield back.

Mr. APPLEGATE. Okay. I thank you very much. I think that concludes the questions from our panel to your panel. We appreciate your being here this morning, and if we have some further questions we'll submit them to you in writing. Thanks to all of you, again.

Next we will have Mr. Frank DeGeorge, associate legislative director of the PVA, accompanied by Mr. Fred Mullin, who is the chief appeals officer; and Mr. Rick Schultz, associate national legislative director of the DAV.

Gentlemen, thank you very much for appearing before the committee. This is sort of old hat to you guys, but it's good to have you here.

Have you made any selection who wants to start? Frank, you're in the center so why don't you just move ahead.

STATEMENT OF FRANK DE GEORGE, ASSOCIATE LEGISLATIVE DIRECTOR, PARALYZED VETERANS OF AMERICA; ACCOMPANIED BY: FRED MULLIN, CHIEF APPEALS OFFICER

Mr. DEGEORGE. Thank you, Mr. Chairman. As a matter of fact, Mr. Chairman, if you will permit me on presentation I must leave for another hearing. I would ask your indulgence, and at the same time thank your committee's staff, as we have discussed this previously. So I will ask your permission at this time to leave after the presentation.

Mr. APPLEGATE. That's perfectly okay. Your statement will, of course, be entered into the record.

Mr. DEGEORGE. Thank you very much, sir.

Mr. Chairman and members of the committee, I wish to introduce Mr. Fred Mullin, who is a PVA chief appeals officer for many years. I am accompanied by his presence and his talent and his knowledge, so if there are any questions that may be asked after we make our presentation, Mr. Mullin has the expertise to answer those questions. Thank you.

Over the years PVA has found the VA's claims and appellate process to be equitable, efficient, and just. The agency, for the most part, clearly has the veteran claimant's well-being in mind and is mandated to give the veteran the benefit of doubts throughout the adjudication process.

Likewise, we have full trust in and respect for the Board of Veterans' Appeals. This body consists of highly competent professionals who seek to interpret Title 38, United States Code, and all governing VA regulations, in a fair and equitable manner. This is not to say, however, that over the same period of time, fluctuations in staffing levels of VA claims processing personnel, coupled with the increase and complexity of veterans' claims submitted, have not put certain strains on the VA's adjudication process.

PVA has prepared two attachments for this testimony which we respectfully request be included in the hearing record. Attachment number one provides a spread sheet of the number of cases ruled on by the Board over a 10-year period from 1977 to 1987, including the percentages allowed, denied, and remanded. Attachment two charts the same information graphically over time comparing workload against the number of sitting BVA full-board sections. For comparison purposes only, we have included PVA's experience in handling cases in each of these categories as well.

As the charts indicate, there have been certain fluctuations in staffing levels brought on by impact of the Gramm-Rudman-Hollings Deficit Reduction Act which have caused disruptions in appeals processing.

PVA has long been concerned about the impact of across-the-board staffing cuts in the VA, whether they impact on health care, research, or benefit delivery. While the Board has been able to compensate for these staffing fluctuations, these changes in personnel levels do have a serious impact on the potential number of sitting Boards, management, and efficient production of the Board as a whole.

Attachment two only depicts decisions made by the Board, not the total number of cases pending in any given year. With this in mind, we believe it is important to note that while the total number of pending cases mentioned has remained fairly constant over the past 3 fiscal years, there has been a slight decline in the number of decisions reached.

We understand that the implementation of certain quality initiatives in fiscal year 1986 resulted in an average 10 percent increase in length of decision per case resulting from increased attention to the details of each veteran's claim. While obviously having a certain negative impact on appeals production, these quality initiatives, PVA believes, are laudable.

During the third quarter of fiscal year 1987, PVA began to receive multiple decisional documents from the BVA for single cases. In the past the BVA would render only one decision per case, irrespective of the number of issues involved.

Under this procedural change, it is possible to receive multiple decisions in a single case since the case may be subject to different decisions based on the different nature of the issues being appealed. For instance, when this takes place, one issue being allowed and another denied, the decisions are recorded by the BVA as an allowance and a denial. In previous years, only the allowance would be counted where a single decisional document per case was generated.

The number of decisions generated, therefore, is not truly reflective of the actual case output of the BVA. By reporting increasing

numbers without indicating that they represent only decisional documents rather than cases, one might perceive that the BVA is disposing of more cases than it actually is.

We wanted the subcommittee to be aware of this change in monitoring future BVA decision totals.

The PVA has experienced a sharp increase over the past 3 fiscal years in the number of cases recommended to the regional offices for further development, review, and determination. PVA is deeply concerned about this rising remand rate. It is another clear example of the inadequacies we have observed at the field office level which have the potential to cause errors, delay claim processing, and further frustrate the veteran seeking a timely review of his or her claim.

I see my time is up, Mr. Chairman. PVA appreciates the action of this subcommittee in restoring proposed cuts in DVB staff funding. We applaud your interest in the VA's appellate process in holding these hearings on an issue so important to all of America's veterans, and for that we thank you very much.

[The prepared statement of Mr. DeGeorge appears on p. 69.]

Mr. APPLEGATE. Thank you very much, Frank.

Without objection the two attachments that you have will be entered with your testimony.

Mr. DEGEORGE. Thank you very much, Mr. Chairman. Again, I apologize for having to leave.

Mr. APPLEGATE. That's okay. We appreciate your being here, too. Rick?

STATEMENT OF RICHARD F. SCHULTZ, ASSOCIATE NATIONAL LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS

Mr. SCHULTZ. Thank you, Mr. Chairman and members of the subcommittee.

I'm pleased to appear here today to present the views of the DAV on the operation of the Board of Veterans' Appeals.

At the outset, Mr. Chairman, I wish to commend you and the members of the subcommittee for holding this oversight hearing. Clearly, this reflects the sincere interest of the subcommittee on this most important subject.

As you know, Mr. Chairman, the DAV's primary interest is in the welfare of America's service-connected veterans and their families. However, the DAV services are not restricted solely to service-connected veterans, as we do offer counseling and representation to all veterans, their dependents, and survivors.

The DAV employs some 251 full-time, professionally trained, national service officers located throughout the country. To ensure that each individual VA claimant receives complete and thorough DAV representation throughout the claims processing system, the DAV also maintains a national appeals office here in Washington, D.C., which is staffed by nine highly-skilled national appeals officers.

At this time I would like to discuss some of the problems dealing with timeliness. While the backlog of cases has abated somewhat, the time it takes for veterans to receive a decision on their appeal from the notice of disagreement through the final action by BVA

continues to remain at very high levels. For the first three quarters of fiscal year 1987 it was 418 days. Of these 418 days, 284 days were spent at the regional offices, and 134 days at BVA.

It is significant to note that the regional offices, since fiscal year 1979, have experienced a 30 percent reduction in Department of Veterans Benefits full-time employees without a corresponding decrease in work load.

Mr. Chairman, another area of concern to DAV is the high number of cases being remanded. During the first three quarters of fiscal year 1987 more than 20 percent of all cases received at BVA were returned to regional offices. It is important to note that during this same period 20.2 percent of all cases remanded by BVA to regional offices were subsequently allowed by those offices. Additionally, we are concerned with the degree of training currently provided DVB compensation and pension personnel. We understand that approximately $150,000 is spent annually by VA's central office in the training of rating Board and other adjudication personnel.

Mr. Chairman, in an effort to reduce the high lengths of time, or the length of time VA claimants must wait to receive decisions on their appeals, and to increase the quality of cases being sent to the Board of Veterans' Appeals, we offer the following suggestions: one would be to increase the FTEE at the regional offices; two, to provide adequate levels of funding for greater training of regional office personnel; and, three, to conduct an in-depth study of cases remanded to regional offices by BVA.

In conclusion, Mr. Chairman, it is our opinion that by increasing the FTEE and DVB and providing adequate training for regional office adjudication personnel, veterans and their dependents will be greatly assisted in that the cases going to the Board of Veterans' Appeals will be of a higher quality.

This concludes my statement, Mr. Chairman. Again, I wish to thank you and the members of this subcommittee for allowing DAV to present its views on this most important subject.

Thank you.

[The prepared statement of Mr. Schultz appears on p. 74.]

Mr. APPLEGATE. Thank you very much, Rick, for your statement.

I don't have any particular questions at this moment, and therefore I'll turn over the questioning to Mr. Evans.

Mr. EVANS. Thank you, Mr. Chairman.

Why is it that individual unemployability rating decisions are so conspicuously absent from the BVA's central index of decisions, the so-called "AIRS" directory? Do you have any opinion about that?

Mr. MULLIN. Personally, I don't know that they are. I've had occasion to use the AIRS research center, and as far as I know there are unemployability decisions in there. I think that in virtually every case that is disposed of by the Board the decision is subject to indexing in the AIRS system.

Mr. EVANS. Do you have an opinion, Mr. Schultz? Is it true that there is no entry of issues of individual employability or dissenting opinions? Have you found any dissenting opinions in that director as far as those issues of individual employability?

Mr. SCHULTZ. Personally I have never seen a dissenting opinion in an individual unemployability case.

Mr. EVANS. Have you?

Mr. MULLIN. No, I haven't.

Mr. EVANS. Do you have problems? Do you hear from service officers who complain that in the face of overwhelming evidence of unemployability that the DVA simply concludes that the veteran is employable without any detailed analysis in the decision?

Mr. MULLIN. I have seen decisions that have been less than full in regard to the reasons for making that decision and facing the evidence. But in my own opinion it depends on how much weight the individual reviewing attorney gives the evidence in the case. Certain shades of red are certain shades of red to certain people, and what might be unemployability in one person's mind might not be in the other. That's not to say that we agree with the Board's final analysis and decision on the case. We have had occasion to request reconsideration in those instances where that's occurred.

Mr. EVANS. Mr. Schultz?

Mr. SCHULTZ. Yes, I can say that we have had problems with unemployability cases, and I might also add that in cases where we see that the Board of Veterans' Appeals is granting an individual unemployability case we note that regional offices don't seem to be following up and granting them in the same numbers.

Also I might add that in those cases where we feel that the Board of Veterans' Appeals has made an error, we will in fact request a reconsideration of those decisions. I don't have our national field staff here with me today, but I can assure you that we do request reconsideration of decisions.

Mr. EVANS. Is reconsideration granted in many cases?

Mr. SCHULTZ. I don't have those figures with me today, but I can provide that.

Mr. EVANS. If you could I would appreciate it.

[The information appears on p. 78.]

Mr. EVANS. Do you continue to observe, as testified by Mr. Eaton in 1985, wide variances in approval rates from section to section within the BVA in similar, or even identical, kinds of cases?

Mr. MULLIN. From my experience, and from the makeup of the individual Board sections—I think Mr. Eaton touched on this in response to a question earlier—the sections are generally divided up whereas certain specialties of cases will be assigned. You may have a session, for instance, that is assigned the primary job of disposing of cases which involve special monthly compensation, and if there has been recent legislative changes in that particular area that perhaps were not understood by the regional office, and were forwarded to the Board of Veteran Appeals in spite of those legislative changes, well, you're naturally going to see an increase in allowance along those lines corresponding with that legislative change.

I'm not trying to indicate that that is the sole reason that this would occur, but there are specific categories of cases—for instance I & I's and radiation cases, PTSD cases, Agent Orange cases—which are assigned to certain sections. In the case of I & I's and radiation and Agent Orange, when your primary responsibility as a section is to dispose of those cases, and legislative changes have not occurred, and statutes and regulations do not allow for an allow-

ance, in spite of the increasing numbers of those cases coming in, you're going to see an increased denial rate from that section. I think, basically, that is the reason for that.

Mr. EVANS. Any comment, Mr. Schultz?

Mr. SCHULTZ. Yes. Again, and just to follow up on what he said, you'll see higher rates from one section to another section, and as Mr. Eaton indicated you have different issues handled by different Boards. But I might also add that where we see similar facts in cases, and one Board is allowing and one Board is denying, obviously we are going to request reconsideration of that decision based on similar facts in another case.

Mr. EVANS. And you don't have any today——

Mr. SCHULTZ. I don't have any data with me, but, again, I can furnish you with any data that we have on that.

Mr. EVANS. I would appreciate that. Thank you both for testifying.

Mr. APPLEGATE. Thank you, Mr. Evans.

Mr. Penny?

Mr. PENNY. Mr. Chairman, I don't have any questions. I think their testimony is pretty straightforward.

Mr. APPLEGATE. Well, I agree with you.

I think that your testimony has been straightforward, and we appreciate your testimony.

Does counsel have any questions that they would like to ask?

Mr. Kingston SMITH. No thank you, Mr. Chairman.

Mr. APPLEGATE. All right. Rick and Fred, we appreciate your being before the committee. If we have any other questions concerning this we will submit them to you in writing. If you have any other additional comments, please submit them to us. We are always open and ready to receive whatever is important to the workings of this committee, and what may improve the BVA. I think it is important to you, too. Thank you very much for being here.

Our second panel will include Mr. Richard O'Dell, vice president and Chairman of the Vietnam Veterans of America Committee on Advocacy, VVA; and Mr. Paul Egan, legislative director of the VVA. We also will have Phil Wilkerson, assistant director of the National Veteran Affairs and Rehabilitation Commission of the American Legion; and Mr. Gordon Thorson, special assistant, National Legislative Service, VFW.

Gentlemen, thank you very much for coming before the committee to give testimony this morning on our subject. You may proceed—whoever has drawn the short straw.

Mr. THORSON. I'll go ahead.

Mr. APPLEGATE. Okay, Gordon, you win.

STATEMENT OF GORDON THORSON, SPECIAL ASSISTANT, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS

Mr. THORSON. Mr. Chairman and members of the subcommittee, thank you for this opportunity to appear and express the viewpoint of the Veterans of Foreign Wars. Our organization believes that every effort should be made to continue to monitor and improve

the quality and timeliness of all decisions rendered by the Board of Veterans' Appeals.

Our complete written testimony has been previously delivered to the subcommittee, and we ask that it be made a permanent part of the hearing record. I will summarize our written testimony.

The Board of Veterans' Appeals is often referred to as the supreme court of veteran benefit decisions. They are the court of last resort for a veteran in his claim against the government. That is why it should be made abundantly clear that every effort must be made to ensure that a veteran's claim is given a comprehensive and thorough review, thereby insuring fair and just treatment under the law.

The VFW has reviewed the current status of the Board of Veterans' Appeals with the Chairman of the Board of Veterans' Appeals and our own VFW chief of appeals. We are pleased with the results of our discussions. It is our considered opinion that the Board of Veterans' Appeals is handling the case load in a most timely fashion.

Timeliness is important, but not nearly as important as a thoroughly reviewed and properly considered final decision—a quality decision. We should never allow the pursuit of timeliness to overshadow the absolute need for first-class quality decisions.

We do have some suggestions to help improve the appeals process and ultimately improve the final product, a fair decision.

The current high remand rate—20.6 percent—suggests that inadequate development is occurring at some VA regional offices. We believe that the recent staff reductions at VARO adjudication divisions is partially responsible for the increasing numbers of underdeveloped appeals.

Suggestion number two: we think it important that the Board of Veterans' Appeals consolidate its operations. All Board sections should have equal availability and access to resources and share the same roof.

Suggestion three: we, again, ask that a third personal hearing room be made available to accommodate the backlog of personal hearings that now exists at the Board of Veterans' Appeals.

In closing, Mr. Chairman, we commend the subcommittee for holding this hearing and actively responding to the continuing need for improvement and quality in VA services.

Thank you, sir.

[The prepared statement of Mr. Thorson appears on p. 79.]

STATEMENT OF PHILIP R. WILKERSON, ASSISTANT DIRECTOR, NATIONAL VETERANS AFFAIRS AND REHABILITATION COMMISSION, THE AMERICAN LEGION

Mr. WILKERSON. Thank you, Mr. Chairman. The American Legion appreciates the opportunity to offer comment on the current operations of the Board, as well as the development of appeals at the regional office level.

In an oversight hearing before this subcommittee in May of this year the American Legion expressed a judgment that continued reductions in field level personnel in recent years has had a direct and adverse impact upon the quality of decisions on claims. One of

the key factors there contributing to this declining quality has been the large number of retirements among the senior adjudication personnel.

We believe that one measure of the gradual erosion in the quality of rating decisions is the increased number of claims in which notices of disagreements have been filed. The trend is upward and not downward as many types of claims have become more complex and require more manhours to develop and adjudicate. In fact, in 1986 a total number of 63,800 notices of disagreement were filed, and ultimately 55 percent of these were certified to the Board.

As indicated in the VA's reports, for the first three quarters of fiscal year 1987 the rate will probably exceed the total for all of last year.

This erosion of quality is also reflected in the increasing number of cases remanded. In fiscal year 1986, of the 42,000 decisions considered by the Board, 18.8 were remanded for additional action, and it is of particular concern that for the first three quarters of this fiscal year the percentage is in excess of 20 percent.

Even though the claimant bears the ultimate responsibility for the preparation and filing of their own claim, the VA shares this responsibility. Title 38 speaks of the VA's obligation to assist a claimant in developing the facts pertinent to his or her claim, and to render a decision which grants the claimants every benefit that can be supported in law while protecting the interests of the government. In our opinion, the statistics strongly support the conclusion that fully 20 percent of the claims considered by the BVA have not been fully developed, nor adjudicated adequately by the regional office. It should be noted that of all of these cases remanded, 26 percent were granted in whole or in part.

In discussing the problem of development of appeals at the regional office level with our service officers, we find an attitude among the rating Boards that "let Washington"—meaning the BVA—"handle the complex cases." We do not feel that this rationale is acceptable at all.

Another situation that gives us cause for concern is where a request for additional advisory opinions or examinations have been requested and denied without being reflected in the record, and we strongly feel that claimants should not be forced into a lengthy appeal for such expert or advisory opinion since they cannot be obtained elsewhere outside of the agency.

With regard to the operations of the BVA, we cited in an oversight hearing in October of 1985 the example of Post Traumatic Stress Disorder and the problems in developing this particular type of case wherein the policy guidelines and instructional manuals on the subject were not being followed. Despite increased staff training and coordination on this subject, in our experience in the interim there does not appear to have been any significant improvement in the VA's performance with regard to this type of claim. In fact, the Board reports that since 1985 20,000 PTSD claims have been adjudicated, 55 percent of which were approved. Of those subsequently allowed by the Board of Veterans' Appeals, the allowance rate, which was 15 percent, is higher than the average rate for the Board's approval.

We continue to believe that many more cases should have been allowed based on the information and evidence of record. We believe there is some good news and bad news in the BVA's remand rate, which is 37.4 percent. It represents favorable action, on the one hand, but it likewise reflects an unacceptably large percentage of such cases being denied initially and then subsequently certified without essential development having been accomplished.

We feel that the remedy of a reconsideration is an effective and essential tool in representing and prosecuting the interests of every claimant.

The American Legion has offered what we believe to be constructive criticism of certain actions of the regional offices and the Board of Veterans' Appeals. We would certainly be glad to answer any questions.

[The prepared statement of Mr. Wilkerson appears on p. 82.]

Mr. APPLEGATE. Thank you very much, Mr. Wilkerson.

In answer to Mr. Thorson, though you are summarizing, your entire statements will be inserted in the record immediately following your oral presentations.

Mr. O'Dell?

STATEMENT OF RICHARD E. O'DELL, VICE PRESIDENT AND CHAIRMAN, COMMITTEE ON ADVOCACY, VIETNAM VETERANS OF AMERICA; ACCOMPANIED BY: PAUL S. EGAN, LEGISLATIVE DIRECTOR, VIETNAM VETERANS OF AMERICA

Mr. O'DELL. Mr. Chairman, the Vietnam Veterans of America is pleased to appear today to share with you our views on the Veterans' Administration's Board of Veterans' Appeals.

Accompanying me is Mr. Paul Egan. Without doubt he is familiar to each of you as the past deputy director of the American Legion's National Legislative Commission. It is both a pleasure and a privilege for me to present to you the new legislative director of Vietnam Veterans of America, Mr. Paul Egan.

Mr. EGAN. Thank you, Mr. Chairman.

I'd like to preface my summary by making a statement which is really to state the obvious, and that is that the Board of Veterans' Appeals is, in effect, the supreme court of the VA's adjudicative operation. As such, it is the last shot the veteran has to get a claim approved. Necessarily, if there are deficiencies in the way the Board conducts its business, then they have to be corrected. But if there are serious fundamental deficiencies in the way the Board operates, then something more is needed.

We believe the deficiencies in the Board of Veterans' Appeals are institutional, irreparable, and deserving of the only solution we think that can give the veteran a fair shake, and that is the enactment of legislation authorizing judicial review of VA adjudications.

What are the deficiencies? First of all there are variances between decisions made on similar cases between various sections of the BVA. In testimony in 1985 the Chairman of the Board of Veterans' Appeals himself indicated not only are there variances on similar decisions, but there are variances on equal and identical decisions. That, alone, in our view certainly warrants the need for a higher authority to review the decisions of the Board.

The use of production quotas—there's been some discussion of that already this morning—but that is perhaps the most insidious of all of the deficiencies within the Board. As a practical matter it may be necessary in the interest of getting the work done that production quotas are necessary, but the effect the production quotas are having is not doing much to provide the veteran with a fair shake.

When production quotas are used—and we believe that they are used much more than any qualitative standards—it forces lower-ranking staff attorneys to take short cuts, it makes them work rapidly, and on top of that it must be understood that the Board members themselves rely on the workups provided by these staff attorneys who are under great pressures to do the work as quickly as possible.

Another deficiency, also related to production quotas, is the inequitable distribution of the case load. It may be the responsibility of individual section chiefs to determine the distributions of case load, but the presence of the thinnest, easiest cases, known as "blades" interjects something brand new into that entire process.

If we recall that the Board members are receiving year-end bonuses for equalling or exceeding production standards, then it is also reasonable to believe that the highest-ranking individuals on the Board are going to get the greatest numbers of blades. That means that the easiest cases are handled by the most-experienced attorneys, and the most difficult cases are routinely handled by the least experienced. Once again, it doesn't gravitate in favor of equity for the veteran.

There are also, in our view, some tacit policies which have been reported to us which don't bear the force of law, but are applied in cases, nonetheless. I've already mentioned the term "blades." For example, there was one individual reported to us who was so successful at hording these blades that he took on the nickname of "fingers,"—presumably behind his back. But the significance of this is that the individual was able to horde so many blades that he was thought to have been risking the possibility of cutting his fingers, and so he was nicknamed "fingers."

Another example of a term that is applied to some cases, as reported to us, is the so-called "coffin-tester rule," that is generally applied in cases where people are claiming 100 percent disability for total unemployability. Well the rule, as applied, holds that if the individual can test a coffin, then he is employable.

The subject of the General Counsel's opinions—whether they're motivated by politics or budget—was denied by a spokesman from the General Counsel; however, there are examples that I can think of off-hand, such as the General Counsel opinion on the means test and General Counsel opinion on the vet centers, which we strongly believe were predicated on the influence of the Office of Management and Budget.

So, in conclusion, Mr. Chairman, we think the fundamental deficiencies in the Board's operations warrant judicial review, and the legislation should be moved forward with haste.

Thank you.

[The prepared statement of Vietnam Veterans of America appears on p. 89.]

Mr. APPLEGATE. Thank you very much, Paul.

I appreciate all of your testimony, your testimony, and your addendum commercial for judicial review.

I have no particular questions at this time for any of you. I will open the questioning. I will begin with Mr. Lane Evans.

Mr. EVANS. Thank you, Mr. Chairman.

Mr. Wilkerson, I appreciate the fact that the American Legion is raising this issue, as it has in the past, about PTSD claims. You stated that from your experience, even though you've raised this issue now for over 2 years before this committee, there does not appear to be any significant improvement with regard to the VA's overall performance on PTSD claims, and that you continue to believe that many more cases should have been allowed based upon the information and evidence in the record.

Given the fact that you've highlighted this, that the VA, itself, has gone through some improvements in educating its people about the whole problem of developing cases, given the fact that you feel more cases should have been allowed based on information that was in the record, isn't this really the best possible argument that advocates have for judicial review, that if there was a court that could have a check and balance in some of these decisions we'd get a lot more than just 15 percent or so, the approval rate that's allotted the BVA?

Mr. WILKERSON. Really I would not care to comment as to the necessity of undertaking some additional type of review of such cases in a court of law—at least at this time. I would certainly be glad to provide a response to you for the record.

Mr. EVANS. All right. I guess what I'm asking is: here is one of our major veterans organizations; it's worked through the oversight process, has raised this concern—and I do appreciate your organization doing that. At the same time, we've waited 2 years. What do we tell the veterans, that you feel have legitimate claims, should have been allowed based on the information in the record? What do we tell these people when they're foreclosed at the level of the BVA appeal and they've been through all that? Your organization has identified a problem, but I don't see what the solution is short of judicial review. Maybe you don't want to comment on it now, but I guess either by letter or something—I'd like a response.

[The information appears on p. 86.]

Mr. WILKERSON. Well, speaking very personally, I think there would probably be a number of solutions to the basic problem. Our primary concern and commitment is towards working within the system, and we believe that we can be more effective, certainly, in representing the veterans' interests and working directly to seek a change in both the policy and the administration of the regional office system of the Board of Veterans' Appeals by working with those officials that are charged with direct responsibility of the administration and the operations of the programs.

Mr. EVANS. Well, I certainly appreciate that, but this has been 2 years that you've raised this concern——

Mr. WILKERSON. Well, it really goes back a lot further than that.

Mr. EVANS. Well, there's the saying that "justice delayed is justice denied." What do we tell these veterans? I guess that's my point. If you've worked through the system, I appreciate that, and

that's the way the system is. We may have problems changing it because we don't have the votes out of this committee, let's say, but I mean I just don't understand what we tell the veterans of this country that are denied when, particularly, your organization feels that these cases should be allowed based on the information that is obtained in their record. I don't know what we tell these veterans.

Mr. WILKERSON. I'm not sure what we tell them, either.

Mr. EVANS. Could you give me a ballpark figure of the percentage that you think would have been allowed if the record had been properly considered? Right now the BVA is overturning I guess 15 percent. The allowance rate is higher than allowance of other claims. Would you have an estimate of what percentage of these PTSD claims would be allowed?

Mr. WILKERSON. No, sir. I would have no realistic estimate.

Mr. EVANS. Is there any way you could come up with that?

Mr. WILKERSON. I seriously doubt it.

Mr. EVANS. All right.

Well let me then shift. Maybe I'll have to ask Mr. Egan about a personal matter, because I know that this is your first appearance before this committee now as the VVA's legislative director, and I guess since you were—at least since I've been a member of Congress—with the American Legion, don't you find it difficult to switch gears and come before this committee and lobby us now for judicial review?

Mr. EGAN. I'm really glad you asked that question, because rarely do I get an opportunity to respond to a question about what I believe personally, apart from what I do professionally.

The question is really two parts. It is an ethical question as well as a personal question. First of all, as a representative for any organization, in this particular business, one's own views are really irrelevant, and must necessarily be subordinated to the views of the organization you represent.

The second part of your question, the personal part, involves what I believe to be right about this particular issue. I can tell you that in spite of 8 years of employment as a legislative representative with the American Legion, I've always believed that judicial review was the only legitimate solution to an impossible situation. I mean, from the time 8 years ago when I first walked into the VA regional office on North Capitol Street and began to work claims, to go to the ratings sections and look at these GS-5's and 7's with stacks and stacks and stacks of these claims on their desks, knowing that they're working frantically because they're under pressure to meet production quotas, there's no other than the conclusion that the veteran can't get a fair shake given the institutional paralysis that currently exists.

Mr. EVANS. I've got a few more questions, but I yield back and then we can come back.

Mr. APPLEGATE. Okay. Mr. Penny?

Mr. PENNY. Thank you, Mr. Chairman.

Do any of you have an estimate on the number of cases submitted each year that are being submitted for a second or third time? It's indicated that 42,000 cases are processed by BVA in a given year. How many of those show up again the next year, those that are obviously denied and then resubmitted?

Mr. THORSON. Mr. Penny, the VFW doesn't really keep a record of those.

Mr. PENNY. Mr. Eaton, do you have those numbers, just as long as you are still here?

Mr. EATON. No, sir. I don't even know for sure whether we can get that. There certainly are some numbers.

Mr. PENNY. And that certainly factors into the success ratio. It would be instructive, I think, to identify how many claims are submitted time and again and denied on the same basis, and what the success ratio of the appeal might be if we only took into account those new claims that are being submitted.

Mr. Egan looks like he's anxious to respond to that, and——

Mr. EATON. I only—oh, you were asking Mr. Egan?

Mr. PENNY. No. I did look at you because nobody at this panel seemed to have the answer, and I thought you might.

Mr. EATON. Let me say this: I don't think we can get you that information, but I'll have my people run their computers and see if they can come up with something.

Mr. PENNY. It may be that with the use of computers you might be able to pull that out.

Mr. EATON. We'll give it a shot.

Mr. PENNY. Thank you.

[The information appears on p. 78.]

Mr. PENNY. Mr. Egan.

Mr. EGAN. I can't answer your question directly, but your question does bring to mind another related issue which was raised earlier in the hearing in an exchange between the chairman and the Veterans' Administration, and that is the apparently increased rate of remands.

Well, as I described to you the situation with the easy cases, the blades, I would submit that an additional explanation for that increase in remands is a shortage of blades, because it takes very little time to remand a claim, even if it is a foot thick. So when there is a shortage of easy cases, I would submit that at least there is a significant possibility that in the rush to meet production quotas——

Mr. PENNY. They're going to send them back.

Mr. EGAN. That's right.

Mr. PENNY. I want to get into that particular issue in a little more detail since the BVA raised the point. I'll direct these questions to you, Mr. Egan.

How is it that the distribution of cases results in the easier cases or the cases with the thinner file being processed by the more senior members? Is there a seniority system within the staff there that allows the more senior employees to pick their cases? Isn't there some kind of a panel that has an even-handed judgment about distributing those cases to the various divisions?

Mr. EGAN. Well, as described by Chairman Eaton, each individual section chief has ultimate responsibility for distributing the claims folders among the staff assigned to the Board. What we submit, though——

Mr. PENNY. Okay. So the individual divisions would get, probably, a representative sampling of cases, but within that division, as they assign them to the staff to develop, the section chief, in

your judgment, often gives preferential treatment to more senior members in terms of giving them the "blades"?

Mr. EGAN. I'm not exactly certain about whether it is the section chief who actually does the distribution in all cases, or whether he delegates that to some senior staff attorney. That's a question that I——

Mr. PENNY. But in practice you can document that, in fact, the supposedly easier cases are being handled by the more senior members?

Mr. EGAN. We believe that, because we believe that the monetary incentives, the incentive to be promoted, the incentive against being penalized, gravitates very heavily in favor of production over quality, and therefore we believe, especially since Board members themselves are getting bonuses based on production, that they will horde the easier cases.

Mr. PENNY. And do you have statistics—I know this was brought out in earlier testimony, and maybe it was answered and I missed it—do you have—if you're getting the tougher cases by the more junior staff attorneys, statistics should bear out that they're not getting much in the way of bonuses, because if they're getting the tougher cases, they can't be meeting those production expectations.

Mr. EGAN. Are you talking about Board members, or are you talking about lesser-ranking?

Mr. PENNY. I guess I'm talking about staff people, the more junior staffers that, under your testimony, or based on your testimony, would be getting the tougher cases, which means they would then be able to process fewer cases, which should also then mean that the statistics would show that they're not getting much in the way of bonuses.

Mr. EVANS. Will the gentleman yield? I understand from Mr. Eaton's testimony that many of the lower ranking attorneys don't qualify for those bonuses or otherwise promoted——

Mr. PENNY. In any event.

Mr. EGAN. I'd like to answer—first of all you're assuming that the staff attorneys are doing everything they possibly can as completely and comprehensively as they can to do a fair review of all these cases. Now, if a lower-ranking staff attorney wishes to maintain his production he simply is going to take some shortcuts.

Mr. PENNY. Get a remand?

Mr. EGAN. Get a remand——

Mr. PENNY. A remand is considered a disposition, just as well as——

Mr. EGAN. Remand or he'll write up the claim as a denial.

Mr. PENNY. All right. So it is treated as a disposition of that claimant's file, whether it's remanded or whether some ruling has been reached on the claim itself; is that correct?

Mr. EGAN. That's my understanding.

Mr. PENNY. Thank you, Mr. Chairman. My time has expired.

Mr. APPLEGATE. Mr. Evans, did you have something else that you wanted to ask?

Mr. EVANS. Yes, Mr. Chairman, just a few more questions directed to the VVA.

Friday night "20/20" carried a segment about the VA entitled, "Whose side are they on?" In it a VA central office legal consult-

ant declared that production quotas at VA regional offices result in more emphasis on processing paper than on serving veterans. In your opinion, do you think the same kind of principle applies and operates within the Board of Veterans' Appeals?

Mr. EGAN. I think our statement for this morning's hearing is self-explanatory. The short answer to your question is yes.

Mr. EVANS. What about the individual unemployability rating decisions? You say they are conspicuously absent from the BVA's central index of decisions. Can you tell us a little more about that?

Mr. EGAN. Well, as we understand it there are apparently two indexes, and the more easily available, the more readily accessible, does not contain a listing for individual unemployability. However, a more complete, less accessible director does.

Mr. EVANS. Thank you, Mr. Chairman.

Mr. APPLEGATE. Thank you, Mr. Evans.

I believe counsel has a couple of questions they would like to have. Mr. Brizzi?

Mr. BRIZZI. Thank you, Mr. Chairman.

Mr. Egan, I'd like to just follow up on that last point there. Can you identify for me the other indexing system?

Mr. EGAN. I can identify for you the indexing manual that does not contain individual unemployability, and I have a copy of it.

Mr. BRIZZI. Is that generally available to the public?

Mr. EGAN. I believe it is.

Mr. BRIZZI. What is the title, please? Could you read it?

Mr. EGAN. "Board of Veterans' Appeals Indexing Vocabulary, 1987 Decisions/Alphabetic Prepared for the Appellate Index and Retrieval Staff by—" so on and so forth.

Mr. BRIZZI. And does that contain a reference to individual unemployability cases?

Mr. EGAN. No, it doesn't. It does contain a reference to restoration of employability, however.

Mr. BRIZZI. Okay. My real reason for wanting to question you stems from many of the allegations you have made today in your testimony. Certainly the testimony has prompted many questions from the panel; however, I would like to ask you, upon what basis are many of your questions formed? I mean, do you actually have evidence, documentation, or statistics that will bear out many of the questions you have raised—in particular the blade cases, the manner of distribution of cases, the bonus situation that you have mentioned, the coffin-testing rule with regard to unemployability decisions? Frankly, we would like to see that if you have it. Could you furnish that for us?

Mr. EGAN. The basis of the charges that we've made are basically reports from people we consider to be reliable current and former employees of the Board of Veterans' Appeals, and we cannot tell you the names of those individuals because we would fear for their jobs, and I'm sure that you can understand that.

Mr. BRIZZI. Certainly. Do you have any other factual evidence in that regard, other than such statements of individuals that unfortunately we cannot cross examine?

Mr. EGAN. I realize that raises a problem of credibility; however, I would point out that the people we have spoken to—or who have spoken to us—the unanimity of what they have said about these

phenomena within the operation of the Board of Veterans' Appeals pretty strongly suggests that there is more to this than just somebody's say-so.

Mr. BRIZZI. Okay.

Mr. EGAN. I would certainly recommend that it might be advisable for this subcommittee to undertake its own inquiry to attempt to verify some of these things, or to establish the fact that these things don't exist.

Mr. BRIZZI. Understand that I'm not intending to be critical. I do, however—since I am an attorney—consider that evidence is very important to decision-making, and from a staff viewpoint, if a lot of allegations are being made that perhaps are based on opinion rather than a factual basis, I'd like to be able to distinguish between the two.

I have no further questions, Mr. Chairman.

Mr. EGAN. May I just make one comment? The Chairman of the Board, Mr. Eaton, has acknowledged the existence of blades. He has acknowledged the existence of a production quota system. Now, it is more than simply an allegation to conclude from those two individual factors that there are clear incentives created for people—monetary incentives, employment security incentives—that are bound to have an effect on the way people conduct themselves in the execution of their professional responsibilities at BVA. It doesn't necessarily take a host of people willing to parade before this subcommittee to say that in all likelihood it is true.

Mr. EVANS. Mr. Chairman?

Mr. APPLEGATE. Mr. Evans?

Mr. EVANS. You've been lobbying Congress for 8 years previous to your appointment to the VVA; is that correct?

Mr. EGAN. That's correct.

Mr. EVANS. There's no reason to believe that you're going to change and lose any of your credibility now that you've joined VVA is there?

Mr. EGAN. I certainly hope not. I think that in my time working with this committee and the—I think I've established——

Mr. EVANS. It certainly—at least you're not going to lose that credibility that you've established over 8 years to make some debating points at a—unsubstantiated debating points at one particular hearing, particularly your first hearing as VVA's legislative director, I would assume.

Mr. EGAN. I'm not sure I understand exactly what you're driving at.

Mr. EVANS. In other words, you've built this credibility up. I doubt that for scoring points at one hearing that you would waste all those 8 years of credibility just to make particular points—biased points, perhaps, as far as the VVA is concerned?

Mr. EGAN. I certainly hope not. I don't think so.

Mr. EVANS. All right. Thank you.

Mr. APPLEGATE. I don't think there's any question about—anybody's questioning anybody's credibility at this point. We all know you, Mr. Egan, from many years back. But I do think that when you come in—and anybody that comes before the subcommittee and does make statements, that there should be documentation. At least, that is very extremely helpful to the committee that we have

that, more than if it is a stated opinion. We can certainly develop our agenda a lot easier based on documentation and facts. I'm sure that you can understand that.

Mr. EGAN. Well, we've attempted to do that in providing the attachments to our statement.

Mr. APPLEGATE. Okay. All right. That's good.

Mr. Wilson?

Mr. WILSON. Thank you, Mr. Chairman.

Mr. Egan, as I heard Mr. Eaton's testimony I think that each time he talked about production he also talked about quality. Was that not true?

Mr. EGAN. I recall hearing him say that.

Mr. WILSON. I guess my question is: would you advocate that there be no production standards?

Mr. EGAN. In my statement I said that as a matter of practical reality it is necessary to have some kind of production standard. However, how this production standard is operated, whether or not this production standard is too excessive is certainly an open question.

Mr. WILSON. Do you have any examples at all—to follow up on Mr. Brizzi's question, do you have any examples at all of a bonus having been given when production was high and quality was low?

Mr. EGAN. The Chairman of the Board this morning gave an example of one individual having received a $5,000 bonus, and another one having received a $500 bonus.

Mr. WILSON. Did the chairman indicate that the person that got the $5,000 bonus had low quality?

Mr. EGAN. No, he didn't.

Mr. WILSON. Did he not say he had high quality?

Mr. EGAN. Yes. He also said that he had high production.

Mr. WILSON. That's correct. He did.

Mr. Wilkerson, on page two of your testimony you talked about the 20,300 PTSD claims, and you say that 55 percent were approved. That contains those claims for increases, those claims, also, for service connection; is that not true?

Mr. WILKERSON. Yes, sir, it is.

Mr. WILSON. Does the 55 percent also contain the allowances by the Board of Appeals?

Mr. WILKERSON. No, sir. That's at the regional office level.

Mr. WILSON. So 55 percent were approved at the regional office, some 15 percent were also approved at the central office level, Board of Veterans' Appeals, and some 27 or—I've forgotten the exact figure—37.4 were then also remanded; is that not true?

Mr. WILKERSON. Yes, sir.

Mr. WILSON. Isn't that an awfully high allowance for a remand figure in comparison to other claims for disability?

Mr. WILKERSON. I would say so. Unfortunately, I'm not very good at figures.

Mr. WILSON. Well, 55 percent, plus 15 is 70, and then 37 remanded. Those figures contain also service connection and also claims for increase. So out of 20,000, that just occurs to me, Mr. Chairman, to be an awfully high allowance rate for a particular kind of disability.

Mr. EVANS. Could I clarify? I don't think we're talking about 55 percent plus then 15 percent of all cases, are we, or are we talking about—I guess I have to direct this question to Mr. Wilkerson—15 percent of the 45 percent were not allowed, is that correct?

Mr. WILSON. I think we're talking about the 20,300 total claims which were for service connection and for increases. Of that total number I don't know how many were for service connection and how many were for the increase. But if 55 percent of that 20,300 were allowed, and then in addition to that there would have been a 15 percent allowance rate of the remainder by the Board of Veterans' Appeals, and then 37.4 for remands, I think that's more than 100 percent.

Mr. EVANS. Well, I think what I'm trying to indicate is that it's 15 percent of those that were appealed to the Board of Veterans' Appeals, so that's 15 percent of 45 percent—I don't know what that amounts to, but it's different than 15 percent of 100 percent of the total cases. So that's one of the things I'm trying——

Mr. WILSON. That's what I was trying to get clarified.

Thank you, Mr. Chairman.

Mr. APPLEGATE. Thank you very much, gentlemen. I appreciate your appearing before the committee representing your organizations, and certainly we will be fully utilizing the testimony that has been given.

I want to thank Mr. Ken Eaton and his staff for staying on and listening to the testimony, and would certainly welcome your response to any of the questions that have been raised here today.

Mr. APPLEGATE. We will keep the hearing record open for a period of 2 weeks for the purpose of members submitting written statements or questions of the witnesses, and without objection that is ordered.

If there is nothing else to come before the committee, or no other statements or questions, the committee is adjourned.

[A letter from Mr. Ken Eaton addressing various questions raised during the hearing in response to his invitation from Mr. Applegate appears on p. 120.]

[Whereupon, at 11 a.m., the subcommittee was adjourned.]

APPENDIX

STATEMENT OF HONORABLE BOB MCEWEN

THANK YOU, MR. CHAIRMAN.

AS RANKING MEMBER OF THE SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE, I AM KEENLY AWARE OF THE RESPONSIBLITY WE HAVE AS LEGISLATORS IN THE AREA OF VETERANS' DISABILITY CLAIMS. IT IS OBVIOUS YOU FEEL THAT RESPONSIBLITY TOO, MR. CHAIRMAN, AND I APPRECIATE YOUR CALLING THIS HEARING. THE VA'S ADJUDICATION OF VETERANS' CLAIMS SHOULD, IN MY VIEW, HAVE TWO MAJOR ATTRIBUTES. FIRST, IT MUST BE FUNDAMENTALLY FAIR. BY THAT, I MEAN THAT EACH VETERAN SHOULD HAVE THE OPPORTUNITY FOR HIS OR HER CLAIM TO BE CONSIDERED FULLY AND SYMPATHETICALLY, WITH ALL REQUIREMENTS OF DUE PROCESS BEING MET. AND SECOND, CLAIMS DECISIONS MUST BE PROMPT. OFTEN TIMES, A DISABLED VETERAN NEEDS VA COMPENSATION IN ORDER TO MEET LIVING EXPENSES AND A SLOW DECISION CAN MEAN HARDSHIP FOR THE VETERAN.

SINCE OUR VETERANS' SERVICE ORGANIZATIONS ASSIST MANY OF OUR VETERANS IN PREPARING THEIR PRESENTATIONS TO THE BOARD OF APPEALS, THEIR HANDS-ON EXPERIENCE IS ESPECIALLY VALUABLE TO US. WE ARE ALL DETERMINED THAT THE BOARD CONTINUE TO BE AS EFFECTIVE AND AS FAIR AS POSSIBLE, AND THIS HEARING IS A POSITIVE STEP IN THAT DIRECTION.

OUR COMMITTEE IS GUIDED IN ITS ACTIONS BY AN ABIDING COMMITMENT TO OUR VETERANS. AND IT IS ESSENTIAL WE ASSURE THAT OUR NATION'S DISABLED VETERANS RECEIVE THE BENEFITS THEY HAVE EARNED THROUGH THEIR SERVICE TO OUR COUNTRY.

THANK YOU, MR. CHAIRMAN.

STATEMENT OF HONORABLE

GERALD B. SOLOMON

THANK YOU, MR. CHAIRMAN.

I COMMEND YOU FOR CONTINUING THIS SUBCOMMITTEE'S REGULAR OVERSIGHT ON THE OPERATION OF THE BOARD OF VETERANS' APPEALS AND THE VA'S APPEALS PROCESS FOR DISABILITY COMPENSATION CLAIMS. MY PRESENCE HERE THIS MORNING IS EX OFFICIO, AS RANKING MEMBER OF THE FULL COMMITTEE. BECAUSE THE VA'S CLAIMS PROCESS IS SO IMPORTANT TO VETERANS, I WANTED TO ATTEND.

HAVING SERVED IN THE MARINE CORPS MYSELF, I AM ESPECIALLY CONCERNED THAT FELLOW VETERANS WHO HONORABLY SERVED THEIR COUNTRY IN ALL OF THE MILITARY SERVICES RECEIVE EVERY BENEFIT OF DOUBT IN DECISIONS ON DISABILITY CLAIMS.

WITH THE TENS OF THOUSANDS OF CLAIMS THE VA MUST DECIDE, WE REALIZE A FEW MISTAKES WILL BE MADE.

HOWEVER, WE CANNOT TOLERATE MISTAKES WHICH GO UNCORRECTED AFTER THEY ARE FOUND.

AND WE CANNOT TOLERATE A SYSTEM WHICH DOES NOT DO ITS LEVEL BEST TO AVOID MISTAKES IN THE FIRST PLACE.

THE CHAIRMAN OF THE BVA, MR. KENNETH EATON, WILL REPORT ON THE BOARD'S OPERATION OVER THE PAST YEAR AND ANSWER OUR QUESTIONS.

I JOIN YOU, MR. CHAIRMAN, IN WELCOMING CHAIRMAN EATON.

THEN WE'RE GOING TO HEAR FROM THE VETERANS' SERVICE ORGANIZATIONS WHO PROVIDE VERY EFFECTIVE REPRESENTATION FOR MANY VETERANS WHO MAKE CLAIMS FOR DISABILITY.

I KNOW PVA, DAV, VVA, THE AMERICAN LEGION AND THE VFW WILL ALL GIVE US THEIR CANDID VIEWS, WHICH WE WELCOME. IT'S GOOD TO SEE EACH OF THEM HERE THIS MORNING.

MR. MCEWEN, WHO IS UNAVOIDABLY DETAINED THIS MORNING, WILL BE COMING LATER IN THE HEARING, IF AT ALL POSSIBLE, AND HE HAS REQUESTED THAT I ASK UNANIMOUS CONSENT FOR HIS STATEMENT TO BE PLACED IN THE RECORD.

THANK YOU, MR. CHAIRMAN.

October 6, 1987

OPENING STATEMENT OF CONGRESSMAN LANE EVANS

BEFORE THE SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE

OF THE HOUSE VETERANS AFFAIRS COMMITTEE

HEARING ON THE OPERATION OF THE BOARD OF VETERANS' APPEAL

Mr. Chairman,

Thank you for calling a hearing on the operation of the Board of Veterans' Appeals (BVA).

As you are probably aware, I have a particular concern regarding the Veterans' Administration's treatment of our veterans as it relates to the processing of claims and the need for judicial review. I strongly feel that the VA claim system is not perfect and that there are veterans and their dependents that are being denied the compensation to which they deserve -- this point was well made in the recently aired segment of the ABC television program "20/20". It is clear that the procedures and activities of the BVA are a strong consideration in determining the need for judicial review for our veterans.

Finally, judicial review is needed to give veterans the opportunity to seek an independent review of Veterans' Administration decisions which have denied veterans compensation they seek. I deeply believe our veterans who have sacrificed so much for our country are entitled to this fundamental protection and I have introduced legislation, H.R. 639, to remedy this problem.

I look forward to today's testimony from the Veterans' Service Organizations and from the VA regarding this very timely matter and I am sure to have several questions. Thank you, Mr. Chairman.

VETERANS ADMINISTRATION
Statement of Kenneth E. Eaton
Chairman, Board of Veterans Appeals
To the Subcommittee on Compensation,
Pension and Insurance
House Committee on Veterans' Affairs

October 6, 1987

Mr. Chairman, I appreciate this opportunity to meet with your Subcommittee to discuss the operations and performance of the Board of Veterans Appeals.

At my last appearance before this Subcommittee in October of 1985, I reported to you on our successful reduction of BVA Response Time on Appeals. BVA Response Time on Appeals, our most commonly used indicator of the Board's capacity for handling appeals on a timely basis, had risen to an intolerable level by the early 1980's due to steady increases in the rate of appeal filings experienced nationwide beginning in the mid-1970's. The structural expansion to 21 board sections facilitated by the passage of Public Law 98-223, combined with the increased budgetary resources necessary to support this expansion, had allowed us to turn the tide on the appeals backlog and reduce our response time to roughly 125 days.

I am pleased to be able to report to you now that our BVA Response Time today is approximately 135 days; a level that we believe strikes a reasonable balance between appellant rights to prompt resolution of their appeals and the time requirements for thorough review and due process considerations by the Board. Our response time has remained relatively constant over the past two years despite some rather wide fluctuations in the Board's average employment level that resulted from the staffing restrictions we had to apply during FY 1986 to accommodate the funding constraints associated with the Gramm-Rudman-Hollings funding sequestrations of that year. We began FY 1987 at an employment level of only 392 FTEE, which was 35 FTEE below our congressionally authorized strength of 427 FTEE. Consequently, our first order of business this past year was to begin the process of recruiting qualified replacement staff and providing them with the training necessary to play productive roles in the Board's operations. This process was completed by the middle of FY 1987, and our response time and other production indicators for the second half of this past fiscal year reflected the restoration of our

previously impaired productive capacity. As we prepare to begin this new fiscal year, the Board's personnel strength is approximately at our fully staffed and congressionally authorized level. I have included a table (Table 1) with this prepared statement summarizing some of our most relevant production related statistics over the past five fiscal years to provide you with an overview of our productive endeavors.

In your letter of September 11, 1987, you expressed your intention to consider, among other subjects, backlogs on pending appeals. While I would be the first to acknowledge that we occasionally experience lengthy delays in our processing of individual appeals, I believe that our overall timeliness, as indicated by our response time, is quite respectable. I believe that the terminology we have grown to accept over the years to describe the VA appellate program's pending workload is somewhat misleading. We have come to refer to all appeals that are pending in any phase of the appellate process as part of an appeals "backlog," when it is only natural to expect some volume of appeals to be in process and awaiting final decision under the highest capacity and most streamlined appellate system that would be theoretically conceivable.

Over this past year we have had an average of approximately 15,500 cases physically on hand at the Board in various processing phases. To provide an example of how these appeals are distributed at the Board from a processing standpoint, we have broken down the Board's 15,302 cases that were pending as of the end of August 1987. 6,433 or 42.0% of these cases were charged to our Hearing Section, the majority of which were in the hands of the various veterans service organizations for review and preparation of briefs on behalf of the appellants. 1,411 or 9.2% were under the control of our Correspondence & Special Correspondence and Review Sections, which are responsible for handling much of the Board's voluminous correspondence requirements, including appeal-related inquiries from congressional offices, veterans and their families, veterans service organizations, and a host of other correspondents. 970 or 6.3% were in the hands of other sections of the Board's Administrative Service for some required procedure. 4,847 or 31.8% were located either in a Board Section or elsewhere in the BVA Professional Service. Only 1,641 cases or 10.7% of the Board's total volume were in a pending docket action status awaiting BVA action. Given the BVA's average weekly production of between 800 and 850 appellate decisions, the 1,641 cases that were pending docket action amount to approximately a two week workload. We have found through experience that, given our present size and

section configuration, the Board operates most efficiently when our physical case inventory is between 12,000 and 16,000 appeals. When our inventory drops much below this ideal level, our efficiency begins to drop. When viewed from this inventory perspective, I feel that the 15,500 decisions we have pending at the BVA on the average can not in all fairness be categorized as a backlog.

This same inventory rationale is applicable to the volume of appeals that are pending in the field in varying appellate process stages. For the past two years there have been roughly 45,000 appeals pending in the field at all times awaiting final action, if we include in this figure all pending Notices of Disagreement and all Substantive Appeals that have not yet been perfected for certification to the BVA. It is misleading to classify these cases as a backlog, however, because the appeals are not yet ready for BVA certification. Under the arrangements that have been in effect between the Department of Veterans Benefits and the Board for the past two years, DVB field stations are instructed to immediately forward to the Board all cases that have been certified for BVA action. Over the past three years, 287 calendar days elapsed on the average appeal between the time that a Notice of Disagreement was first received and the time that the Substantive Appeal was certified to the BVA. While I cannot speak for DVB as to the processing time that ideally should be necessary between receipt of a Notice of Disagreement and certification of a Substantive Appeal to the Board, it is reasonable to assume some volume of appeals will always exist in this pre-certification status.

I believe that real progress has been made in recent years in reducing the overall time required to decide appeals within the entire VA system. There is always room for improvement, and we intend to continue to press for such improvement wherever we can identify delays in the appellate system. As mentioned earlier, we feel that the response time level at which we have been operating for the past two years strikes a reasonable and desirable balance between the needs for timeliness in the resolution of appeals and the allowance of a sufficient timeframe on each appeal to assure adequate standards of due process consideration and thoughtful deliberation on the part of the Board. We do not want to seek timeliness at the expense of quality.

Two years ago I described to you in some detail the intensified quality review program that we had then recently instituted. Our reasoning behind this program was that as the Board had grown to meet the increased demands placed upon it by VA appellants, it had become more difficult yet simultaneously

more important to ensure that we retained high standards of quality and a certain degree of consistency among Board Sections in their treatment of veterans' appeals. We have since formalized this program and included it in our annual Program Operating Plan that we provide to the Administrator. The specific objectives we have set forth for this program are as follows: (1) to assure that all appellate decisions will meet the Board's standards of substantive accuracy and legal sufficiency; (2) to assure that all written decisions convey the Board's findings clearly and effectively with compassion and sensitivity towards the veterans and their dependents; and (3) to assure that a certain level of consistency is maintained among decisions and Board Sections, while still preserving the Board Members' decision-making independence. Before commenting on the effectiveness of this program, I will briefly describe how our quality review system works.

The Board's quality review program is a multi-tiered operation. After a signed decision leaves a Board section but prior to its dispatch from the Board, it is forwarded to our Appellate Index and Review System (AIRS) section where it undergoes editing and examination by a rotating group of predominately junior attorneys who form the first level of our quality review structure. 100% of BVA decisions are subjected to quality review operations at this level. Any decision that appears to contain any defect of either a substantive or nonsubstantive character is withdrawn from the normal processing flow and directed to the next level of quality review. This next level of quality review is staffed with select senior attorneys who will analyze in depth each decision referred to their attention. Decisions found to contain any minor or nonsubstantive errors will be returned to the initiating Board Section for correction and returned to the normal processing flow. Decisions that appear to be substantively flawed or that contain any significant error will be forwarded to one of the Board's two Deputy Vice Chairmen (DVCs), who constitute the highest level of quality review. The DVCs will review and analyze decisions that reach their level within the quality review chain, and any issues that remain doubtful will be resolved between the DVCs and the Chief Members of the originating Board Sections, after which they will be dispatched as a final decision. Copies all of dispatched decisions are then sent to the AIRS section where they again undergo a final 100% quality review by BVA professional staff members in the course of being indexed for inclusion in the Board's decision data base. Should any discrepancy be discovered during this procedure, the decision would be referred to one of the DVCs for a determination as to whether some corrective action is appropriate.

I believe that our quality review program has become an invaluable part of the BVA system that is providing us with demonstrable, if not entirely measurable, results. Quantitative program indicators for any quality review program are tenuous at best. Recognizing this limitation, one approach we have taken for evaluating our quality review operation is to first establish certain program indicators that will clearly reflect the breadth and intensity of our quality review effort. The percentage of BVA decisions subjected to intensified quality review refers to the group of decisions that, as a minimum, have gone to the second level of quality review. The second indicator (i.e., number of BVA decision categories subjected to 100% quality review) consists of appeal categories which, due to the topical content, may have a higher propensity for error or may be more highly visible as a result of public interest.

In addition to these indicators which are intended to quantitatively measure the extent of the Board's effort applied to quality review, we have only recently attempted to close the feedback loop by establishing, on a trial basis, two indicators of quality that originate from sources external to the BVA. The first of these two indicators is legitimate motions for reconsideration received which allege obvious decision errors. Please note that our use of the term "legitimate" in this context is not intended to be an evasive measure; we merely wish to exclude any frivolous reconsideration requests that we may receive. The second indicator consists of post-decision referrals from indexers in our AIRS section to the DVCs identifying substantive decision errors. Lastly, these somewhat quantitative indicators are supplemented by the non-quantitative indicators that have traditionally served as measures of our performance. Prominently included in this group is the feedback we receive in a variety of forums from various interest groups, including veterans service organizations, Members of Congress, and other interested parties, our critics included.

I believe that our quality review program has influenced the general quality of the Board's decisions in a very positive manner and that we are achieving the objectives set out for the program. One of the few external quantitative performance measures that we have tentatively established for the program, i.e., reconsideration requests, have been running at a rate that is between 5% and 10% below that of the preceding year. From a content standpoint, BVA decisions are longer, more complex, and more detailed. The average decision dispatched during the first half of FY 1987 was over 10% longer than the

average decisions dispatched two years ago at the outset of our efforts to enhance the quality review effort. Ultimately, however, the final analysis of the effectiveness of our program will rest with the judgment of others and will be made through more qualitative and intuitive processes.

Your September 11, 1987 letter also requested that we address the quality of the appeals function at the field station level and provide an explanation for the recent and substantial increase in remand decisions. There is an acknowledged relationship between these two subjects, and we will attempt to address these areas together. Our ongoing observations indicate that the quality level of the appeals function at VA field stations is consistently high, with certain minor exceptions that we will enlarge upon in one area of our remand discussion. An indicator that we believe exemplifies the generally high quality level of the field station appeals function is the number of BVA allowances reversing field station decisions compared to the number of field station adjudicative decisions made during the same period. In FY 1986, there were a total of 5,362 BVA allowances versus a total of 5,147,182 adjudicative decisions for an overall reversal rate of .1%. Similarly, there have been 3,836 BVA allowances versus 3,761,495 adjudicative decisions, resulting in a reversal rate of .1% for the first three quarters of FY 1987. I believe that these statistics are indicative of a high quality field station appellate program.

The fact that BVA remand rates have risen in recent years is a matter that is of both interest and concern to the BVA. Without speculating at this point as to the reasons underlying this rise in the BVA remand rate, we have first reviewed the indicator that we consider to be most indicative of whether the Board's remand rate is generally well-founded. The indicator we use for this purpose is the Benefits Granted Rate, which is an expression on a percentage basis of the rate at which benefits are granted on remanded appeals (e.g., during FY 1986, benefits were granted in 1,731 remanded appeals and a total of 7,897 appeals were remanded). For FY 1982 through FY 1987, BVA remand rates and benefits granted rates were as follows:

	FY 82	FY 83	FY 84	FY 85	FY 86	3 Qtrs FY 87
BVA Remand Rate	15.6%	15.5%	14.9%	16.3%	18.8%	20.6%
Benefits Granted Rate	22.1%	22.0%	20.9%	24.1%	21.9%	20.2%

Although the Benefits Granted rate has dropped slightly from the peak rate of 24.1% experienced in FY 1985, the overall rate

has not varied nearly as much as the BVA remand rate during the extended time period.

While we would like to be able to point to some single factor that we have identified as the principal cause behind our remand rate increase, this, unfortunately, is not possible. Our examinations and analyses of this issue have led us to several factors that we believe are all partially responsible for the changing trends in our remand rate. These factors are as follows:

(1) Effectiveness of Advocacy. Veterans service officers and other representatives are becoming increasingly more effective as advocates on behalf of VA appellants. Improved training and other resource and staffing changes have clearly resulted in enhanced levels of representational services to veterans. Like all of us, veterans service officers are being evaluated "by the numbers" within their own organizations relative to their performances in the representational aspects of their positions. They too are aware that 20% to 25% of all remanded appeals result in an allowance of benefits in the field and that some percentage of those appeals that return to the Board from remand will also be allowed. Consequently, service officers will logically press for a remand of an appeal where an allowance does not appear likely. Our experience indicates that service officers in general have become more tenacious and effective in pursuing remands.

(2) Aging Appeal Base. As we draw further away time-wise from the periods of armed conflict that have been responsible for a significant number of the appeals that appear before the Board, we tend to see fewer appeals, as a percentage of the Board's overall appellate workload, in which the issues are relatively simple and the BVA can render a correspondingly simple decision to either allow or deny with no further development requirements. Events and supporting evidence tend to become hazy with the passage of time, thus lending an additional element of complexity to the Board Members' decision-making responsibilities. We believe that such added complexities will inevitably lead to some additional remands.

(3) BVA Handling of Special Category Appeals. Certain special categories of appeals have tended to attract considerable attention from within the veteran community and the public at large. We must frankly admit that the BVA has a somewhat heightened awareness of case development needs when confronted with appeals within these special categories, which at various times have included Agent Orange appeals, ionizing radiation appeals, appeals of former POWs, and PTSD appeals. While the

remand rates for most of these special category appeals are currently in line with the Board's overall remand rate, our remand rate for PTSD appeals rose from 18.8% in FY 1984 to 23.5% in FY 1985 to 33.0% in FY 1986, and it currently stands at 37.4% for the first three quarters of FY 1987. We suspect that this trend may result in part from the combined influences of evolving attitudes towards this disorder on the part of medical professionals and increased Board Members' sensitivity to assuring that exhaustive levels of detail are followed in the development of this high profile area of appellate activity.

(4) Other Notable Appellate Issue Areas. Another area that we believe has contributed to the rise in the BVA remand rate is waiver of recovery of overpayments. Our remand rate for appeals connected with waiver of recovery of overpayments has grown from a rate of 24.8% in FY 1984 to 29.7% in FY 1986, and it is currently running at a rate of 36.9% for the first three quarters of FY 1987. Since the Board annually decides over 2,000 appeals involving waiver of recovery of overpayments, a significant change in the remand rate for this category of appeals will have some affect on the overall remand rate. We suspect that there may be several factors responsible for this high remand rate, including some of the various computer matching programs that have been activated for the purpose of detecting improper payments. A second important factor here concerns the functional area at the regional office level that is responsible for development of appeals involving waiver of recovery of overpayments. The fact that development of these appeals is the functional responsibility of the Committees on Waivers and Compromises rather than the Adjudication Division may have some bearing on their potential for remand. This is an area where we believe increased DVB field station attention might result in some appeal development improvements that could, in turn, result in some reduction in the overall number of BVA remand decisions.

Another appeal category that we feel may be relevant to this matter is loan guaranty appeals. Although the Board's remand rate on loan guaranty appeals has remained relatively constant, it has always been high (i.e., roughly 35%). What has changed, however, is the volume of loan guaranty appeals that are being decided by the Board. In FY 1983 the BVA decided 226 loan guaranty appeals. This figure rose to 317 in FY 1984; to 414 in FY 1985; to 713 in FY 1986; and, if the pace of the first three quarters continues, will rise to around 850 for FY 1987. This appellate activity level is not particularly surprising, given the general level of activity in the real estate and mortgage fields in recent years, and we believe that this has contributed to the rise in our remand rate.

(5) External Influences. We are certain that there are some intangible factors that are having a growing influence on our Board Members' collective propensity to remand as opposed to rendering a final decision. The increasing involvement by the Federal Courts in procedural aspects of various administrative claims-processing functions figures prominently in this area. Another specter that seems to be constantly in the background where the BVA is concerned is judicial review. Board Members and BVA staff in general are keenly aware of the criticisms voiced by proponents of judicial review, many of which involve BVA sensitivity to due process observance. We listen closely to the arguments of our critics. Even where we do not share their conclusions, their criticisms are not casually dismissed and may very well affect the Board Members' decision-making processes.

Mr. Chairman, this completes my prepared statement. I will be happy to answer any questions that you may have.

Table 1 Board of Veterans Appeals - Appeals Statistical Data

	FY 1983	FY 1984	FY 1985	FY 1986	3 Qtrs FY 1987
FIELD WORKLOAD DATA*					
Appeals Filed (NODs).....	69,391	61,328	63,045	63,850	54,515
Dispositions.....	64,919	64,621	67,534	60,677	53,343
% Allowed.....	13.5%	12.7%	12.4%	12.5%	12.5%
% Closed.....	20.3%	21.7%	26.4%	22.0%	22.0%
% Withdrawn (and Other)...	10.7%	10.2%	10.4%	10.5%	10.5%
% Certified to BVA.....	55.5%	55.4%	50.8%	55.0%	55.0%
Pending - End of Period.....	49,498	46,818	44,145	45,737	45,839
BVA WORKLOAD DATA					
Receipts.....	41,226	43,811	43,457	43,584	30,604
Dispositions.....	38,591	44,064	45,273	42,003	29,682
% Allowed.....	13.7%	13.8%	13.3%	12.8%	12.9%
% Remanded.....	15.5%	14.9%	16.3%	18.8%	20.6%
% Withdrawn (and Other)...	1.0%	0.9%	1.1%	1.2%	1.4%
% Denied.....	69.9%	70.4%	69.3%	67.2%	65.1%
Pending - End of Period.....	14,750	14,497	12,681	14,262	15,221
Travel Board Hearings.....	464	587	708	645	569
Offices Visited.....	34	48	50	48	49
Categories of Appeals					
Disability Compensation...	76.6%	76.3%	75.7%	75.2%	75.5%
Disability Pension.....	6.4%	7.1%	6.9%	6.5%	6.1%
Medical.....	1.3%	1.6%	1.7%	1.6%	1.4%
Insurance.....	0.4%	0.3%	0.3%	0.3%	0.2%
Death.....	5.7%	6.0%	6.1%	6.1%	6.2%
Training.....	2.3%	2.2%	1.8%	1.8%	1.4%
Waiver.....	5.3%	4.5%	5.3%	5.4%	5.4%
Loan Guaranty.....	0.6%	0.7%	0.9%	1.7%	2.2%
Reconsiderations.....	0.5%	0.6%	0.7%	0.7%	0.7%
Character of Discharge....	0.2%	0.2%	0.2%	0.2%	0.2%
FIELD AND BVA COMBINED					
Final Dispositions.....	61,518	66,152	71,095	61,411	47,569
% Allowed.....	22.8%	21.6%	20.2%	21.1%	22.1%
% Closed.....	21.5%	21.1%	25.0%	21.7%	21.7%
% Withdrawn (and Other)...	11.9%	10.5%	10.6%	11.2%	12.7%
% Denied.....	43.8%	46.8%	44.2%	46.0%	40.6%
Pending - End of Period.....	64,248	61,315	56,826	59,999	61,060
Field: NODs.....	21,609	22,236	20,707	25,448	25,587
Subs. Appeals.....	27,889	24,582	23,438	20,289	20,252
BVA: Subs. Appeals.....	14,750	14,497	12,681	14,262	15,221

* Field workload data estimated for FY 1986 and FY 1987

Board of Veterans Appeals Board Member and Staff Attorney Performance Awards for Evaluation Year Ending 3/31/87

Attachment 1

Board Member Awards

Type Award*	Grade	Name	Salary	2%	3%	4%	5%	6%	Other
SC	GS-15	Edwards, C.	$70,800						$300
SC	GS-15	Giordani, J.	$69,976						$300
SP	GS-15	Moehlmann, H.	$61,006				$3,050		
SC	GS-15	Pettit, C.	$61,006						$100
SC	GS-15	Piedra, J.	$66,198						$500
SP	GS-15	Rice, W.	$62,800				$3,140		
SP	GS-15	Stanford, E.	$64,594				$3,230		
SC	GS-15	Storey, P.	$59,212						$500
SP	GS-15	Sullivan, L.	$59,212		$1,776				
SP	GS-15	Talbot, F.	$61,006					$3,660	
SP	GS-15	Tutera, A.	$59,212		$1,776				
SP	GS-15	Wilkins, S.	$59,212		$1,776				
SP	GS-15	Windsor, C.Q.	$70,800		$2,124				
		Total Board Member Awards =		$22,233					

Staff Attorney Awards

Type Award	Grade	Name	Salary	2%	3%	4%	5%	6%	Other
SP	GS-14	Aguayo-Pereles	$47,288	-		$1,892			
SP	GS-14	Bosch, R.	$53,388						Quality Increa
SP	GS-14	Braeuer, W.	$50,338			$2,014			
SP	GS-14	Callaway, B.	$47,288	$946					
SP	GS-14	Durkin, S.	$47,288	$946					
SP	GS-14	Gallagher, M.	$47,288			$1,892			
SP	GS-14	Gottfried, L.	$54,913	$1,098					
SP	GS-14	Hogeboom, C.	$47,288	$946					
SP	GS-14	Jones, S.	$51,863			$2,075			
SP	GS-14	Marinelli, B.	$54,913			$2,197			
SP	GS-14	Phillips, N.	$47,288			$1,892			
SC	GS-14	Reddy, W.	$45,763						$500
SC	GS-14	Sullivan, R.	$50,338						$750
SP	GS-14	Westfall, S.	$47,288			$1,892			
SP	GS-14	Yonemoto, R.	$47,288	$946					
SC	GS-13	Freret, C.	$38,727						$350
SP	GS-13	Ormand, J.	$40,018		$1,201				
SP	GS-13	Pelletier, R.	$41,309						Early Promotic
SP	GS-13	Siegel, D.	$40,018		$1,201				
		Total Staff Attorney Awards =		$22,733					
		Total BVA Awards to Board Members and Staff Attorneys =		$44,966					

* Award Types: SP = Superior Performance; SC = Special Contribution

Attachment 2

Last Name	First Name	MI	Grade	Veteran Status
Eaton	Kenneth	E.	SES-5	Veteran
Landers	David	T.	SES-4	Veteran
Bauer	Roger	K.	SES-4	Veteran
Standefer	Richard	B.	SES-4	Veteran
Tobin	Leo	W.	GS-15	Veteran
Totera	Albert	D.	GS-15	Veteran
Storey	Peter	B.	GS-15	Veteran
Rice	Warren	W.	GS-15	Veteran
Stein	Daniel	J.	GS-15	Veteran
Blasingame	Jack	W.	GS-15	Veteran
Wolowitz	Myron		GS-15	Veteran
Sullivan	Laurence	M.	GS-15	Veteran
Sharp	Jane	E.	GS-15	Veteran
Braun	Theodore	A.	GS-15	Veteran
Wells	Kenneth	J.	GS-15	Veteran
Pettit	Calvin	F.	GS-15	Veteran
Andrews	Kenneth	R.	GS-15	Veteran
Perrie	Elizabeth	F.	GS-15	Veteran
Johnson	James	M.	GS-15	Veteran
Wright	Philip	E.	GS-15	Veteran
Hyman	Bruce	E.	GS-15	Veteran
O'Neill	Eugene	A.	GS-15	Veteran
Fava	Anthony		GS-15	Veteran
Schule	John	J.	GS-15	Veteran
Warner	Samuel	W.	GS-15	Veteran
Russell	Craig	P.	GS-15	Veteran
Stanford	Edward	R.	GS-15	Veteran
Wright	Ernest	B.	GS-15	Veteran
Bierman	Daniel	J.	GS-15	Veteran
Cohn	Steven	L.	GS-15	Veteran
Talbot	Francis	F.	GS-15	Veteran
Seery	Edward	W.	GS-15	Veteran
Frank	Richard	B.	GS-15	Veteran
Clark	Halstead	H.	GS-15	Veteran
Philip	Robert	D.	GS-15	Veteran
Day	Jonathan	E.	GS-15	Veteran
Sturek	Clifford	J.	GS-15	Veteran
Harrigan	Terence	D.	GS-14	Veteran
Martin	Jeffrey	J.	GS-14	Veteran
Gick	Gary	L.	GS-14	Veteran
Senyk	George	R.	GS-14	Veteran
Gutstein	Paul		GS-14	Veteran
Moran	Christopher	B.	GS-14	Veteran
Bledsoe	Michael	L.	GS-14	Veteran
Deitch	Robert	C.	GS-14	Veteran
Hayden	Charles	D.	GS-14	Veteran
Moulaison	Philip	E.	GS-14	Veteran
Hogeboom	Charles	E.	GS-14	Veteran
O'Brien	Robert	E.	GS-14	Veteran
Ellis	Robert	A.	GS-14	Veteran

Attachment 2

Last Name	First Name	MI	Grade	Veteran Status
Dean	Dennis	P.	GS-14	Veteran
Anderson	Barry		GS-14	Veteran
Conway	Thomas	J.	GS-14	Veteran
Shufelt	Gordon	H.	GS-14	Veteran
Olson	Clifford	R.	GS-14	Veteran
Anthony	James	R.	GS-14	Veteran
Pace	Timothy	C.	GS-14	Veteran
Witt	Clarence	H.	GS-14	Veteran
Schoenberger	Ripley	P.	GS-14	Veteran
Thompson	Gary	W.	GS-14	Veteran
Christian	Frank	L.	GS-14	Veteran
Aguayo-Pereles	Joaquin		GS-14	Veteran
Caffery	Richardson	A.	GS-14	Veteran
Jones	Stephen	A.	GS-14	Veteran
Yonemoto	Ronald	M.	GS-14	Veteran
Kozina	John	V.	GS-14	Veteran
Satlin	Kenneth	B.	GS-14	Veteran
Swiatek	Mark	J.	GS-14	Veteran
Braeuer	Wayne	M.	GS-14	Veteran
Erkenbrack	Richard	K.	GS-14	Veteran
Reddy	William	J.	GS-14	Veteran
Shea	Michael	W.	GS-14	Veteran
Jordan	Vicky	L.	GS-14	Veteran
Bosch	Ronald	R.	GS-14	Veteran
Regan	Robert	P.	GS-14	Veteran
Ayer	Francis	H.	GS-13	Veteran
Garrett	Peter	H.	GS-13	Veteran
Riddick	Harry	S.	GS-13	Veteran
Freret	Charles	S.	GS-13	Veteran
Potter	Marsball	O.	GS-13	Veteran
Williams	Richard	F.	GS-13	Veteran
Dunphy	James	J.	GS-13	Veteran
O'Donnell	Matthew	B.	GS-13	Veteran
Hanson	Gary	P.	GS-13	Veteran
Mathis	Peter	H.	GS-13	Veteran
Feagan	John	M.	GS-13	Veteran
Leaf	Robert	A.	GS-13	Veteran
Guido	George	E.	GS-13	Veteran
Slocomb	George	M.	GS-13	Veteran
Roberts	Wayne	G.	GS-13	Veteran
Torres	Elving	L.	GS-13	Veteran
Pope	William	F.	GS-13	Veteran
Coffelt	Louis	D.	GS-13	Veteran
Beach	Harold	A.	GS-13	Veteran
Spickler	David	C.	GS-13	Veteran
Dunne	Martin	F.	GS-13	Veteran
Chamberlain	Richard	V.	GS-13	Veteran
Flowers	Frank	J.	GS-13	Veteran
Foehl	Angela		GS-12	Veteran
Jones	Robert	T.	GS-12	Veteran

Attachment 2

Last Name	First Name	MI	Grade	Veteran Status
Koerber	Adrienne		GS-12	Veteran
Ferner	Raymond	F.	GS-12	Veteran
Violante	Joseph	A.	GS-12	Veteran
Brown	Derek	R.	GS-11	Veteran
Heath	Edward	R.	GS-11	Veteran
Torres-Reyes	Debra	R.	GS-09	Veteran
Morrison	Patrick	H.	GS-09	Veteran
Page	David	R.	GS-09	Veteran
Lisansky	David	R.	GS-09	Veteran
Deutsch	Gregory	G.	GS-09	Veteran
Hackett	William	F.	GS-09	Veteran
Gough	Jerome	F.	GS-15	Non-veteran
Moehlmann	Holly	E.	GS-15	Non-veteran
Krenzer	Eileen	M.	GS-15	Non-veteran
Wilkins	Stephen	L.	GS-15	Non-veteran
Kannee	Bruce	N.	GS-15	Non-veteran
Sherman	Iris	S.	GS-15	Non-veteran
Johnson	James	U.	GS-15	Non-veteran
Donsbach	Jan		GS-15	Non-veteran
Rone	Charles	D.	GS-15	Non-veteran
Symanski	Charles	W.	GS-15	Non-veteran
Giordani	Johanna	M.	GS-15	Non-veteran
Marinelli	Bonnie	M.	GS-14	Non-veteran
Ormand	John	E.	GS-14	Non-veteran
Bradford	Anne	M.	GS-14	Non-veteran
McCafferty	Edward	J.	GS-14	Non-veteran
Shaw	Richard	L.	GS-14	Non-veteran
Dowling	Garland	F.	GS-14	Non-veteran
Horrigan	Joseph	M.	GS-14	Non-veteran
Fussell	John	F.	GS-14	Non-veteran
Schwartz	Howard	N.	GS-14	Non-veteran
Gallagher	Bernard	P.	GS-14	Non-veteran
Robin	Nancy	R.	GS-14	Non-veteran
Booher	Alice	A.	GS-14	Non-veteran
Johnson	Nancy	C.	GS-14	Non-veteran
Goodman	Hilary	L.	GS-14	Non-veteran
Reiter	Neil	S.	GS-14	Non-veteran
Sullivan	Robert	E.	GS-14	Non-veteran
Phillips	Nancy	I.	GS-14	Non-veteran
Siegel	James	R.	GS-14	Non-veteran
Keller	Steven	L.	GS-14	Non-veteran
Durkin	Shane	A.	GS-14	Non-veteran
Callaway	Bettina	S.	GS-14	Non-veteran
Westfall	Sarann	S.	GS-14	Non-veteran
Pelletier	Renee	M.	GS-14	Non-veteran
Gottfried	Laurence	R.	GS-14	Non-veteran
Loeb	Glynn	O'D.	GS-14	Non-veteran
Young	Martha	C.	GS-14	Non-veteran
Dannaher	Thomas	J.	GS-14	Non-veteran
Clark	Lisa	B.	GS-14	Non-veteran

Attachment 2

Last Name	First Name	MI	Grade	Veteran Status
Gallagher	Mary		GS-14	Non-veteran
Siegel	Deborah	E.	GS-14	Non-veteran
Lyor	Michael	D.	GS-14	Non-veteran
Copeland	Barbara	B.	GS-13	Non-veteran
Cheek	Michael	D.	GS-13	Non-veteran
Spindler	Kenneth	J.	GS-13	Non-veteran
Wetmore	William	H.	GS-13	Non-veteran
Connor	Richard	E.	GS-13	Non-veteran
Timinski	Michael	J.	GS-13	Non-veteran
Bolyard	David	L.	GS-13	Non-veteran
Broder	Gail	S.	GS-13	Non-veteran
Loeb	James	W.	GS-13	Non-veteran
Sabulsky	Mary	M.	GS-13	Non-veteran
Cardile	John	S.	GS-13	Non-veteran
Pluta	Thomas	A.	GS-13	Non-veteran
Harris	Richard	P.	GS-13	Non-veteran
Powell	Ursula	V.	GS-13	Non-veteran
Rea	Robert	C.	GS-13	Non-veteran
Santee	Dale	W.	GS-13	Non-veteran
Milmoe	Brian	J.	GS-13	Non-veteran
Gervasio	Joseph	P.	GS-13	Non-veteran
Greenstreet	Mark	W.	GS-13	Non-veteran
Black-Tobias	Constance	T.	GS-13	Non-veteran
Manning	John	T.	GS-13	Non-veteran
Raubertas	Michael	S.	GS-13	Non-veteran
Moore	Carol	G.	GS-13	Non-veteran
Bathe	David	H.	GS-13	Non-veteran
Tilley	Sabrina	M.	GS-12	Non-veteran
Wiley	Julia	H.	GS-12	Non-veteran
Hindin	Mark	D.	GS-11	Non-veteran
Vasapoli	Dennis	L.	GS-11	Non-veteran
Heller	Steven	M.	GS-11	Non-veteran
Watson	Calvin	R.	GS-11	Non-veteran
Hudson	Kay	D.	GS-11	Non-veteran
Brogdon	Siobhan	S.	GS-11	Non-veteran
Sylvester	Stephen	F.	GS-11	Non-veteran
Romito	Richard	M.	GS-09	Non-veteran
Lawson	Christopher		GS-09	Non-veteran
Saint-George	Dennis		GS-09	Non-veteran
Smith	Donald	J.	GS-09	Non-veteran
Siegel	Michael	S.	GS-09	Non-veteran
Merna	Jan	E.	GS-09	Non-veteran
Jefferson	William	J.	GS-09	Non-veteran
Gardner-Jones	Gwendolyn		GS-09	Non-veteran
Slezak	Carol	J.	GS-09	Non-veteran
Berg	William	W.	GS-09	Non-veteran
Smith	Terry	H.	GS-09	Non-veteran

CHAPTER 3. PERFORMANCE EVALUATION

SECTION I. GENERAL

3.01 PERFORMANCE APPRAISAL SYSTEM

Under the provisions of 5 U.S.C. 4301(2)(g) and 5 CFR 430.201(d), the Office of Personnel Management has excluded Board Members from the Performance Appraisal System due to the necessity of protecting their judicial independence. Otherwise, performance standards have been established for all BVA positions pursuant to 5 U.S.C. 4302. Employees included in the Performance Appraisal System will be rated on the basis of performance standards applicable to their positions. Individuals should have a copy of their performance standards. Copies may be obtained from the Personnel Assistance Section, room 877B.

3.02 DEFINITIONS

The following definitions apply to this chapter:

a. Written Complaint. "Written complaint" includes any formal or informal written memorandums or other document directed to an individual describing a substantive deficiency in performance.

b. Chief Member. "Chief Member" includes any other Board Member who may be acting on behalf of the Chief Member of a Section in the absence of the Chief Member.

3.03 WITHIN-GRADE SALARY INCREASES

a. General. Under 5 U.S.C. 5335, automatic within-grade salary increases may not be granted on length of service alone. A certification must be made that an employee's work is at an "acceptable level of competence" before the within-grade salary increase can be effected. This is separate and apart from annual performance ratings.

b. BVA Guidelines. Applicable VA guidelines provide that where specific written performance or work standards have been established for a position, the determination should be made on the basis of the extent to which the employee meets these standards. A rating of "outstanding," "highly satisfactory" or "fully satisfactory" will be deemed to establish performance at an "acceptable level of competence." (See par. 3.04a for specific information as to the level of performance considered "outstanding," "highly satisfactory," and "fully satisfactory.")

3.04 SUMMARY RATINGS

a. General. Summary ratings are overall ratings which are prepared annually. They are derived from the employee's achievement with respect to his or her performance standards. Performance standards for various positions at the Board are described in following sections of this chapter and/or in other documents made available to employees. Summary ratings are used in making performance-based personnel decisions. (See the material in par. 3.04b. Also see exhibits 3-1, 3-2, 3-3, and 3-7 concerning Attorneys grades GS-9 through GS-14, Program Assistants, Program Clerks, and Clerk-Typists assigned to the Recording and Typing Section and the Transcription Section.) An employee's performance of each of his/her Key Responsibilities must be rated at the "far exceeds" level for the evaluation period in order to attain an overall summary rating of "outstanding." If performance for each Key Responsibility is rated at least at the "exceeds" level, the summary rating will be "highly satisfactory." If performance for each Key Responsibility is rated at least at the "meets" level, the summary ratings is "fully satisfactory." If performance for any Key Responsibility which has not been designated as a "critical element" is rated at the "fails to meet" level, the summary rating is "minimally satisfactory," provided that performance of all Key Responsibilities which have been designated as "critical elements" has been evaluated at least at the "meets" level. If performance of any Key Responsibility which has been designated as a "critical element" is rated at the "fails to meet" level, the summary rating will be "unsatisfactory." If a warning notice of unacceptable performance has been issued to an employee, his/her summary rating will be deferred during the time that the formal plan to improve his or her performance referred to in the notice is in effect. For an example of such a notice, see exhibit 3-6.

b. Results of Specific Summary Ratings

(1) Outstanding. An employee whose performance during an applicable period meets the criteria for an "outstanding" summary rating will be given a periodic within-grade increase (if otherwise eligible *and* will be considered for a performance award.

(2) **Highly Satisfactory.** An employee whose performance during an applicable period meets the criteria for a "highly satisfactory" summary rating will be given a periodic within-grade increase (if otherwise eligible) *and* will be considered for a performance award.

(3) **Fully Satisfactory.** A rating of "fully satisfactory" is the minimum rating required in order for an employee to receive a periodic within-grade increase (if otherwise eligible).

(4) **Minimally Satisfactory (Marginal).** This marginal rating is applicable when the levels of achievement for all Key Responsibilities designated as critical have been evaluated at least at the "meets" level, but the level of achievement for a non-critical Key Responsibility has been evaluated at the "fails to meet" level.

(5) **Unsatisfactory.** This rating is assigned when achievement for a Key Responsibility designated as critical is evaluated at the "fails to meet" level.

3.05 through 3.09 (Reserved).

SECTION II. PROFESSIONAL SERVICE

3.10 ORGANIZATION AND OPERATION

The organization of the professional service is described in chapter 2, part I, paragraph 2.02. The operation of the Appellate Groups is described in chapter 2, part II.

3.11 RATING OFFICIALS

The Vice Chairman is responsible for performance ratings of Medical Advisers. The Chief Member of each Section is responsible for performance ratings for personnel under his/her supervision (i.e., the Attorney staff and the Program Assistant or Program Clerk permanently assigned to his/her Section). Quality evaluations for the Attorney staff are subject to the concurrence of the Deputy Vice Chairman having jurisdiction of the Section involved. (See par. 3.12b(2)(c).) The Chairman's Executive Assistant is responsible for performance ratings of Program Assistants and Program Clerks who are not permanently assigned to a Section.

3.12 PERFORMANCE PLAN FOR ATTORNEY ADVISERS ASSIGNED TO BOARD SECTIONS

a. When Performance Ratings are Completed. Performance ratings are completed quarterly, except for performance under timely preparation of cases which is rated annually.

b. Basis for Performance Ratings. Performance ratings for Attorney Advisers are based on individual performance with respect to the standards set for three Key Responsibilities: (1) production, (2) quality and (3) timely preparation of cases. The first two Key Responsibilities are designated "critical elements." This means that a "fails to meet" rating for either of these Key Responsibilities requires an annual performance evaluation of "unsatisfactory." The third Key Responsibility is not designated critical. A "fails to meet" rating for this key task will result in a "minimally satisfactory" evaluation, provided performance of the Key Responsibilities which have been designated as critical elements is rated at least at the "meets" level. While the specific performance standards for each of the Key Responsibilities is the same for all Attorneys, the performance plan is designed to account for the increasing complexity of cases assigned to Attorneys as they are promoted to higher grades. Provision is made for "special time" for the completion of extremely complex cases (see par. 3.12b(1)(c)), Attorneys normally are able to complete cases at any given level of complexity more rapidly as they gain experience, the grade of the Attorney is to be taken into account in quality evaluations (see par. 3.12b(2)(b)), etc.

(1) Production (Critical Element)

(a) **How Productivity Is Determined.** Experience discloses that, on the average, it takes a given amount of time to complete each type of case. The time allotted for a particular case is dependent upon its complexity. Built into the time allotted for each type of case are allowances for non-productive time. They include: personal needs, including authorized break periods and trips to the washroom; miscellaneous unmeasured and unavoidable delays, including meetings, membership on committees, boards and civic and welfare activities and temporary interruptions of work because of irregular work flow; quality maintenance including reading, evaluating, and filing newly published media, preparation of reports and maintenance of supplies and materials; and other similar activities except for those instances where special time or administrative leave has been properly approved because of unusual circumstances. In consideration of the necessary writing chores and functions of an employee, a fair method of crediting Attorneys for those miscellaneous tasks is to include allowances in the time values for each work product. Productivity standards for Attorneys have been set on the basis of average time values required to produce each measured unit of work. The standards include personal time and training factors. Performance at 100 percent productivity effectiveness denotes the average expected for all Attorneys as a group in order to accomplish the mission. Some individuals will produce either above or below this expected average for the group as a whole. An Attorney's quarterly, annual or other periodic production rate is computed as follows: Add together the time values of the credited issues on all dispatched decisions. (See par. 3.12b(1)(b).) Divide this number by 60. This figure is called "standard hours." Then determine the total number of paid hours during the reporting period minus holidays, leave, details and authorized special time (net hours on duty). Finally, divide the standard hours by the net hours on duty. The result is the Attorney's productivity effectiveness for that period.

Example: "X" was credited with 90 decisions with time values of 351 minutes each for the quarter ending March 31. There were 512 total paid hours during that period, including two holidays. "X" took 40 hours of annual leave and 8 hours of sick leave. "X" also had 4 hours of special time. (90 x 351) divided by 60 = 526.5 standard hours. 512 – (16 + 40 + 8 + 4) = 444 net hours on duty. 526.5 divided by 444 = 118.6 percent productivity for the quarter.

(b) **Time Values and Code Designations of Appellate Cases**

TIME VALUE IN MINUTES	CODE	
		DISABILITY COMPENSATION
351	01	Service Connection
261	02	Increased Rating
360	03	Special Monthly Compensation
340	04	Benefits to Persons Disabled by Treatment or Vocational Rehabilitation
351	05	Additional Compensation for Dependents
310	06	Restoration of Service Connection
390	07	Legal Relationship
360	08	Retroactive Benefits
390	09	Character of Discharge
260	10	Basic Eligibility (Service, etc.)
390	11	Line of Duty—Willful Misconduct
322	12	Increased Rating (Gunshot Wound)
351	92	Apportionment
351	13	Other
		DISABILITY PENSION
300	24	Permanent & Total Rating
260	25	Increased Rate—Aid & Attendance
300	16	Increased Rate—Age 65 or in Receipt of Pension for 10 or More Consecutive Years
390	17	Legal Relationship
390	26	Increased Rate—Income

TIME VALUE IN MINUTES	CODE	
		DISABILITY PENSION—Continued
390	27	Corpus of Estate
300	28	Extra Schedular Rating (38 CFR 3.321)
300	29	Unemployability (Schedular Requirements Met)
390	19	Income
360	30	Retroactive Benefits
390	31	Character of Discharge
260	32	Basic Eligibility (Service, etc.)
300	33	Other
		VETERANS SERVICE PENSION (Wars Prior to WWI)
300	34	Basic Entitlement
260	35	Increased Rate—Aid & Attendance
		DEATH COMPENSATION
400	36	Service Connection for Cause of Death
390	37	Legal Relationship
340	38	Dependency
400	39	Other
		DEPENDENCY & INDEMNITY COMPENSATION (DIC)
400	40	Service Connection for Cause of Death
390	41	Legal Relationship
390	42	Income (Parents)
360	43	Retroactive Benefits (Includes Compensation and DIC)
300	44	Accrued Benefits (Includes Compensation and DIC)
400	45	Other
		DEATH PENSION
360	50	Basic Entitlement
390	51	Legal Relationship
390	52	Income
390	53	Corpus of Estate
360	54	Retroactive Benefits
300	55	Accrued Benefits
360	56	Other
		INSURANCE
480	60	NSLI—Disability Waiver and Disability Benefits
480	61	NSLI—Beneficiary
480	62	USGLI—Disability Waiver and Disability Benefits
480	63	USGLI—Beneficiary
480	64	Other

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TIME VALUE IN MINUTES	CODE	
		INSURABILITY
480	94	Application for Insurance Contract
480	95	Application for TDIP Rider
480	96	Application for Reinstatement of Insurance Contract
480	97	Application for Change of Insurance Plan
480	98	Other Adverse Action
		SERVICEMEN'S INDEMNITY
480	65	All Appeals Involving Servicemen's Indemnity
		VOCATIONAL REHABILITATION AND EDUCATION
360	66	Basic Eligibility
360	67	Initial Training
360	68	Additional Training
360	69	Subsistence
360	70	Other
		WAR ORPHANS EDUCATIONAL ASSISTANCE
480	71	Basic Eligibility
480	72	Initial Training
480	73	Additional Training
480	74	Subsistence
480	75	Other
		WAIVER (Except Insurance and Loan Guaranty)
380	76	Waiver of Overpayment
		FORFEITURE OF BENEFITS
380	77	Forfeiture Under 38 U.S.C. 3503
380	78	Forfeiture Under 38 U.S.C. 3504
380	79	Forfeiture Under 38 U.S.C. 3505
		HOSPITAL AND OUTPATIENT TREATMENT
215	80	Basic Eligibility (Other than Dental)
215	81	Dental
300	82	Payment or Reimbursement
215	83	Other
		MISCELLANEOUS
250	84	Burial
327	85	Death Gratuity
327	86	Specially Adapted Housing
380	87	Waiver of Indebtedness—Loan Guaranty
327	88	Conveyances
327	89	Civil Service Preference Certification
327	90	Emergency Officers Retirement (EOR)
327	91	Other
750	99	Reconsiderations, All Types

(NOTE: The above time values are increased by 60 minutes when an independent medical expert or Armed Forces Institute of Pathology opinion has been obtained in the case and the opinion request was prepared by the Attorney Adviser who is credited with the decision.)

(c) Special Time

1. Attorney Advisers, GS-13 and Below. Generally, no special time may be given to Attorney Advisers. The work measurement system has been designed to reflect in the time values of each case the research and consultation necessary for decision preparation. The following examples are situations which do not warrant a request for special time:

a. Consultations with a Senior Attorney.

b. Training after the initial 3-month training period in which the Attorney Adviser is not on work measurement.

c. Preparation of a letter requesting an independent medical expert's opinion. (The time value for the case will be increased by 60 minutes when an independent medical expert or Armed Forces Institute of Pathology opinion has been obtained in the case. See the *NOTE* at the end of par. 3.12b(1)(b).)

d. Discussions with other Attorney Advisers about a particular case.

e. Revision of one's own decision.

It is possible that a particular case will require *extensive* research or preparation and therefore be so unlike the ordinary case that some special time appears warranted. In this situation a request for special time should be made. (See par. 3.12b(1)(c)3.) Under no circumstances may special time be awarded when the total time spent is less than the time value assigned to that case. When Board-wide training sessions are held, special instructions concerning special time will be issued.

2. Senior Attorneys. Occasions may arise wherein the Senior Attorney is entitled to special time. Generally, the work will involve tasks not related to his/her own case. The following are *examples* of instances where special time may be permissible:

a. Preparation of a letter requesting an independent medical expert's opinion in cases of *other* Attorney Advisers.

b. Revision of decisions of *other* Attorney Advisers.

c. Assisting Attorney Advisers in the preparation of their cases.

d. Training of Attorney Advisers (the Attorney Adviser being trained is *not* entitled to special time).

e. Special assignments requiring considerable research.

It should be kept in mind that most of the work assignments and special activities inherent in this position have been evaluated and are part of the current work standards.

3. Request for Special Time. Requests for special time should be submitted to the Chief Member on a Reference Slip (VA Form 3230). The reason for the request and the amount of time requested should be briefly outlined. If the request is approved by the Chief Member, that fact should be noted on the VA Form 3230 which should then be initialed or signed by the Chief Member and given to the Section Program Assistant or Program Clerk so that the information concerning special time may be noted on the Section's Board Section Weekly Production Report (VA Form 1-4033). All VA Forms 3230 containing approved requests for special time from all Attorneys for the week will then be attached to the VA Form 1-4033 and forwarded to the Deputy Vice Chairman having jurisdiction of the Section involved for appropriate action, including final approval of the special time requests. If a special time request is not approved by the Deputy Vice Chairman, the VA Form 1-4033 will be returned to the Section for appropriate adjustment.

4. Acting Board Member. When an Attorney has been assigned to a Section as an Acting Board Member even for a few hours, he/she is *detailed* to the position of Acting Board Member. This particular function should never be considered or reported as special time. In determining the productivity for Attorneys, time spent serving as an Acting Board Member will be deducted as detailed time. (See pt. II, par. 2.04e.)

(2) Quality (Critical Element)

(a) Completion of Record of Quality Review — Decisions (VA Form 1-4040). The Chief Member, or his/her designee, will complete the entries on a Record of Quality Review—Decisions (VA Form 1-4040) for each Attorney's decisions after each tentative decision has been reviewed by the Board Members. (See exhibit 3-4 for sample.) A separate form should be used for each Attorney in the Section. The completed forms furnish a record which is used to assist the Chief Member later in completing quarterly performance evaluations. It is necessary that the file number of all decisions and the date of review by the Section be entered on the form in the appropriate block, whether the decisions are deficient or not. The "RATED" column will normally be checked and denotes the decision was reviewed by the Chief Member or his/her designee. The "NOT RATED" column is for use only in the event that neither the Chief Member nor his/her designee is available to review the tentative decision. The initials of the reviewer (or the individual checking the "NOT RATED" column) should be entered in the appropriate column. A mark in one of the columns labeled "ISSUES," "CONTENTIONS," etc., has no weighted value but simply represents the fact that the reviewer has found a deficiency in the tentative decision. The space provided on the face of the form, the reverse side of the form, and attachments (if needed) may be used for any additional comments desired.

b. Completion of Quarterly Quality Performance Evaluation — Attorney Advisers (Grades GS-9 Thru GS-14) (VA Form 1-2283). At the close of each quarter, a Quarterly Quality Performance Evaluation — Attorney Advisers (Grades GS-9 Thru 14) (VA Form 1-2283) will be completed for each Attorney by the Chief Member of each Section. (See exhibit 3-5 for sample.) The purpose of the form is to evaluate each Attorney's ability to prepare tentative decisions. Prior to completing the form, the Chief Member should review the VA Forms 1-4040 which were prepared to evaluate the work of each Attorney during the quarter. VA Forms 1-2283 are broken down into 10 evaluation factors. The maximum score for each factor is 4, permitting a total score of 40. The Chief Member will identify the appropriate "PERFORMANCE LEVEL" for each factor and write in the corresponding number of points in the space provided: 1 = "rarely," 2 = "sometimes," 3 = "usually," and 4 = "almost always." The Chief Member should be careful to avoid marking down a single deficiency under more than one factor. If an error requires markdowns under multiple factors, an explanation should be included in the "JUSTIFICATION" section. Consideration should be given to the grade level of the Attorney in completing the form. *Scores of 4 or 1 for any factor must be supported by written comments in the "JUSTIFICATION" section.* After completing the form, the scores for each factor should be added together and entered in the space designated "TOTAL POINT SCORE." The resulting score is then converted to a percentile. A score of 40 points, a rating of 100 percent quality effectiveness, generally denotes "top quality." It is the highest quality that can be attained under the values assigned for individual quality performance. It would be unusual if an employee ever reached 100 percent quality and maintained it over a sustained period of time. A score of at least 38 points (95.0 percent) results in a quality performance evaluation of "far exceeds," a score of at least 36 points (90 percent) results in a quality performance evaluation of "exceeds," a score of at least 30 points (75 percent) results in a quality performance evaluation of "meets," and a score of less than 30 points (75 percent) results in a quality performance evaluation of "fails to meet." The Chief Member may write any additional comments which have not been included in the "JUSTIFICATION" section, such as notes concerning the receipt of any awards or some other type of special performance recognition during the quarter, in a separate narrative. *Total point scores of less than 30 or of 38 or more must be justificd in a separate narrative and attached to the form.*

(c) Review of Quarterly Quality Performance Evaluations by the Deputy Vice Chairmen. After the Quarterly Quality Performance Evaluation form has been completed by the Chief Member, it will be sent to the Deputy Vice Chairman (012) having jurisdiction of the Section involved by the sixth working day following the end of the quarter. The Deputy Vice Chairman will review the form. If he/she concurs with the appraisal by the Chief Member, he/she will so signify by signing the form on the "Signature of Reviewer" line at the end of the form. The Deputy Vice Chairman may disapprove the

evaluation, based upon his/her experience with cases prepared by the Attorney which he/she has reviewed as a member of the Office of Quality Review (see pt. II, ch. 11). If the Deputy Vice Chairman does not approve the appraisal, he/she will complete and sign a separate VA Form 1-2283. The completed form will be attached to the form completed by the Chief Member. The completed form(s) will then be submitted to the Vice Chairman's secretary (011) for appropriate processing and filing, through the Chief Member. The Chief Member will show the form(s) to the Attorney and, if desired, may take the opportunity to discuss the evaluation with the individual. The Attorney should sign the form containing the final evaluation on the line provided as an acknowledgment that he/she has seen the completed form. The Attorney will be assigned the quarterly evaluation made by the Chief Member and concurred in by the Deputy Vice Chairman, or, if the Deputy Vice Chairman has assigned another evaluation, the evaluation made by the Deputy Vice Chairman.

(3) Timely Preparation of Cases. A Key Responsibility is the timely preparation of cases. The Attorney is charged with the number of occasions that a case is not timely prepared and submitted to the Section. This Key Responsibility is evaluated annually by the supervisor.

c. Specific Performance Standards for the Key Responsibilities

(1) Production (Critical Element). Measured productivity of 120 percent or higher "far exceeds" expected performance. One hundred five percent or higher, but less than 120 percent, "exceeds" expected performance; 75 percent or higher, but less than 105 percent, "meets" the standard; and productivity less than 75 percent "fails to meet" the standard.

(2) Quality (Critical Element). Quality assessed as 95 percent or higher "far exceeds" expected performance. Ninety percent or higher, but less than 95 percent, "exceeds" the standard; 75 percent or higher, but less than 90 percent, "meets" the standard; and less than 75 percent "fails to meet" the standard.

(3) Timely Preparation of Cases. In order to be rated as "far exceeds," all cases must be prepared and dictated in docket number order (oldest case first). There must be no cases appearing on the Vice Chairman's old case list without an excusable justification. The procedures in part II, paragraphs 6.01, 6.02, and 6.03 with respect to advance on the docket, expedite, personal hearing cases, Travel Section cases, etc., must be followed. Decision revisions ordered by the Board Members must be promptly implemented. Tentative decisions returned from the Transcription Section must be promptly submitted to the Section for review. If the Chief Member has counseled the Attorney concerning timely preparation of cases on no more than one occasion during the annual evaluation period, the performance will be assessed as "exceeds." If the Chief Member has counseled the Attorney concerning timely preparation of cases on no more than three occasions, the performance will be assessed as "meets." If the Chief Member has counseled the Attorney concerning timely preparation of cases on more than three occasions, the performance will be assessed as "fails to meets."

d. Procedures for Quarterly Ratings Below the "Meets" Level. Failure to maintain the 75 percent minimum requirement for productivity and/or quality for any three consecutive quarters will require formal action by the Board. Thus, if any Attorney Adviser fails to achieve a minimum cumulative score of 75 percent for productivity or a minimum average score of 75 percent for quality for three consecutive quarters, he/she is failing in a critical area of performance and remedial action in the form of a denial of a within-grade increase, reassignment, demotion or removal may be required. Before an Attorney is subjected to an action based on unacceptable performance, he/she will be provided an opportunity for a period of time to demonstrate work at an acceptable level of competence. An Attorney can expect to receive a formal "Warning Notice of Unacceptable Performance" when his/her *cumulative* productivity for two consecutive quarters falls below 75 percent or *average* quality falls below 75 percent for two consecutive quarters. (See exhibit 3-6.) Shortly after the warning notice has been issued, the Attorney will be presented with a plan to improve his or her performance. The attorney will then have the full remainder of the third consecutive quarter to demonstrate acceptable performance.

3.13 PERFORMANCE EVALUATION OF ATTORNEYS ASSIGNED TO THE APPELLATE INDEX AND RETRIEVAL STAFF (AIRS)

a. Nature of Work Performed. The work performed by AIRS is described in part II, chapter 13. While assigned to AIRS, an Attorney reviews Board decisions and also prepares "Index Code Sheet" (VA Form 1-2282a; see pt. II, ch. 13, exhibit 13-1 for a sample) or enters information similar to that which is entered on the Index Code Sheet on a computer terminal to provide an index to Board of Veterans Appeals decisions.

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EXHIBIT 4-1
Change 11

Attachment 3

GUIDE FOR PERFORMANCE-BASED ACTIONS FOR ATTORNEYS GRADES GS-9 THROUGH 14 ASSIGNED TO BOARD SECTIONS

Minimums for each Critical Element: (Productivity/Quality) Minimum for Non-Critical Key Responsibility: Timely Preparation of Cases	Level of Performance	Possible Actions
120 percent / 95 percent All cases timely prepared. (12-month period)	Far Exceeds	Performance is "Outstanding." Periodic within-grade salary increase required. Consider performance award.
105 percent / 90 percent Counseled on no more than one occasion. (12-month period)	Exceeds	Performance is deemed "Highly Satisfactory." Periodic within-grade salary increase required. Performance award may be considered.
75 percent / 75 percent Counseled on no more than three occasions. (12-month period)	Meets	Performance is considered "Fully Satisfactory." This level required for periodic within-grade salary increase.
Less than 75 percent / 75 percent	Fails To Meet	Performance is considered "Unsatisfactory" and requires initiation of action toward reassignment, reduction in grade, or separation.
Counseled on more than three occasions. (12-month period)	Fails To Meet	Provided the level of achievement for the two critical elements are assessed at least at "Meets," the performance is considered "Minimally Satisfactory (Marginal)." Periodic within-grade salary increase is denied.

c. **Report.** To aid in training and development of other personnel of the Board and to disseminate information for the benefit of all, participants will be requested to share pertinent data and new concepts discussed with their associates at the Board.

2.16 CAREER PROGRESSION FOR THE ATTORNEY STAFF

a. **General.** The material in this paragraph describes the normal career progression pattern for members of the Attorney staff. It represents a statement of Board policy. It should be understood, however, that promotions and other career matters may be affected from time to time by changes in law, labor agreements, and/or policy at higher levels over which the Board has no control and that those changes may prevail against the policies set out herein.

b. **Career Ladder.** The normal career progression ladder for the Attorney staff is from GS-9, GS-11, GS-12, GS-13, to GS-14. Grade GS-14 is considered to be the "journeyman" grade. While the entry level is normally GS-9, attorneys may be hired at a higher level on occasion if they possess special experience and qualifications which the Board considers unusually valuable to its mission. Career ladder promotions depend upon the employee's demonstration of the ability to perform the duties normally performed by an individual serving in the next higher grade, the availability of a sufficient amount of work to be performed at the next higher grade, and meeting the qualification and time-in-grade requirements described in this manual. An attorney selected for a position as a member of the Board's professional staff will be informed in writing of the date by which a determination will be made concerning a promotion to the next higher career ladder grade. Similar information will be provided with respect to the next succeeding promotion at the time of promotion to all following grades, ending with the date of expected consideration for selection for promotion to grade GS-14. If a determination is made not to promote an individual by the date so announced, a date for subsequent consideration will be selected and the attorney will be informed of that date. That date will not be later than 6 months following the previous consideration date. If an eligible employee would have otherwise been promoted, but is not promoted due to a failure to make the determination to promote on the announced date through inadvertence or error, the employee will be promoted to the next higher grade effective at the beginning of the first pay period following the date specified.

c. **Minimum Time in Grade for Promotion.** An Attorney may not be considered for promotion to the next higher grade until he/she has served in his/her current grade for at least 1 year. A Chief Member must give specific justification, in the form of information concerning qualifying experience, when recommending an Attorney for promotion to grade GS-14 who has served in grade GS-13 for less than 2 years.

d. **Performance Criteria for Promotion and the Demonstration of Ability to Perform at the Next Higher Grade.** Attainment of both a production level of not less than 100 percent and a quality evaluation level of not less than 85 percent for the preceding quarter will normally be required for consideration for promotion from the grade of GS-9 to GS-11. Attainment of both a *cumulative* production level of not less than 100 percent and an *average* quality evaluation level of not less than 85 percent for the preceding four quarters will normally be required for consideration for promotion to the grades of GS-12 or GS-13. (Attainment of both a production level of not less than 100 percent and a quality evaluation level of not less than 85 percent for the preceding quarter will be accepted in the case of an individual hired at the GS-11 level who is being recommended for promotion to GS-12.) Attainment of a *cumulative* production level of not less than 115 percent and an *average* quality evaluation level of not less than 95 percent for the preceding four quarters will normally be required for consideration for promotion to the grade of GS-14. Inasmuch as Attorneys serving in the grade of GS-14 prepare decisions in the most difficult cases considered by the Board, it must also be demonstrated that an Attorney being considered for promotion to that grade has adequate experience in dealing with cases involving the resolution of complex issues of law and fact. With respect to promotion to all grades, the Chief Member of the Section to which the Attorney is assigned must certify that, based upon current performance at the time that promotion is recommended, it is anticipated that the Attorney's performance with respect to timely preparation of cases will be at a level which "exceeds" that which is expected for the annual evaluation period during which promotion is recommended. (See pt. I, par. 3.12c(3).)

e. Promotion Procedures

(1) Recommendations for promotion are initiated by the Chief Member of the Section to which the Attorney is assigned. Except as noted in paragraph 2.16c, no specific justification for the recommended promotion is required if the Attorney meets the performance criteria outlined in subparagraph 2.16d and has served in his/her current grade for at least 1 year. The Chief Member may recommend promotion for an Attorney who has the required time in grade and who has achieved performance levels which are less favorable than those described in paragraph 2.16d, but specific justification for the recommendation is required. An Attorney whose performance meets the criteria set out in subparagraph 2.16d shall be presumed to be fully capable of performing the duties required of an Attorney serving in the grade to which promotion is recommended. When these criteria have not been met, the Chief Member must certify that the Attorney is fully capable of performing the duties required of an Attorney serving in the grade to which promotion is recommended. In all cases, the Chief Member must certify that work of the type which is normally performed by an Attorney serving in the grade to which promotion is recommended is available. These certifications are in addition to the certification concerning the Attorney's level of performance with respect to the timely preparation of cases described in paragraph 2.16d.

(2) The Chief Member will forward the recommendation for promotion to the Deputy Vice Chairman having jurisdiction of the Section involved. The Deputy Vice Chairman will evaluate the recommendation and determine whether the criteria described in paragraph 2.16d have been met, whether the required justification is adequate in those cases where the criteria have not been met, and whether all necessary certifications have been made by the Chief Member. If the Deputy Vice Chairman is unable to concur in the recommendation, appropriate reasons will be noted. The completed recommendation will then be forwarded to the Vice Chairman.

(3) The Vice Chairman will conduct a final review to insure that the criteria described in paragraph 2.16d have been met, that the required justification is adequate in those cases where the criteria have not been met, and that all necessary certifications have been made by the Chief Member. Recommendations which are disapproved will be returned to the Chief Member, through the appropriate Deputy Vice Chairman. If the recommendation is approved, the Vice Chairman will endorse his/her approval on the recommendation and forward it for appropriate processing.

STATEMENT OF
FRANK R. DEGEORGE, ASSOCIATE LEGISLATIVE DIRECTOR
PARALYZED VETERANS OF AMERICA
BEFORE THE
SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE
OF THE
HOUSE COMMITTEE ON VETERANS' AFFAIRS
REGARDING THE
"OPERATION OF THE BOARD OF VETERANS APPEALS
AND THE VETERANS ADMINISTRATION APPEALS PROCESS"
OCTOBER 6, 1987

Mr. Chairman and Members of the Subcommittee, Paralyzed Veterans of America (PVA) appreciates the opportunity to express our views regarding the operation of the Veterans Administration's (VA) Board of Veterans Appeals (BVA) and the quality of the appeals function at both VA Field Stations and BVA levels.

Mr. Chairman, since first being chartered by the Congress in 1971, PVA has developed an extensive veterans' service program which, without charge, has assisted thousands of veterans and their families process claims for VA benefits. Our Veterans Benefits Department includes 70 professionally trained service officers and 50 support staff, three National Field Directors, and four Appeals Officers operating from 55 locations throughout the United States. We work for veterans by helping them develop their claims' requests, advising them of the merits of a specific case, and representing them before the VA in the claims process. However, as a collateral benefit, our Service Program, in working with the veteran and the VA, is able to monitor closely both the quantity of veterans' claims being submitted to the agency and the quality of the VA's ability to adjudicate those claims in a prompt and just manner. It is in this oversight capacity that we are pleased to present our testimony today.

Over the years PVA has found the VA's claims and appellate process to be equitable, efficient and just. The agency, for the most part, clearly has the veteran claimant's well-being in mind and is mandated to give the veteran the benefit-of-the-doubt throughout the adjudication process. Likewise, we have full trust in and respect for the Board of Veterans Appeals. This body consists of highly competent professionals who seek to interpret title 38, U.S.C., and all governing VA regulations, in a fair and equitable manner. This is not to say, however, that over the same period of time, fluctuations in staffing levels of VA claims processing personnel, coupled with the increase and complexity of veterans' claims submitted, have not put certain strains on the VA's adjudication process.

PVA believes that this Subcommittee and the Congress acted wisely in 1983 with the passage in the House of H.R. 2936 which gave the Administrator of the VA the discretionary authority to increase the membership of the Board of Veterans Appeals from 50 to 65. This provision of Public Law 98-223, signed into law March 2, 1984, in effect, raised the number of BVA full board sections from 17 to 21. While there is always room for improvement, we believe that this action has gone a long way in enhancing both the quality and the timeliness of the BVA appeals process and in substantially reducing the serious pre-existing backlog of cases and delays in processing.

PVA has prepared two attachments for this testimony which we respectfully request be included in the hearing record. Attachment #1 provides a spread sheet of the number of cases ruled on by the Board over a ten-year period from 1977 to 1987, including the percentages "Allowed," "Denied," and "Remanded." Attachment #2 charts the same information graphically over time comparing workload against the number of sitting BVA full board sections. (For comparison purposes only, we have included PVA's experience in handling cases in each of these categories as well.)

In reviewing this information, certain patterns are clear. In fiscal years 1985 and 1986, there were approximately 43,000 cases, each year, pending before the Board. Projections for fiscal year 1987 indicate that the total caseload will range in the area of 42,000 with a pending backlog of only 1,000 cases at the end of the fiscal year. Considering there were 21 full board sections operating at the end of fiscal year 1987, using these figures, their workload amounted to approximately 2,000 cases per section per year, or 39 cases per section per week. As the chart indicates, however, there have been certain fluctuations in staffing levels brought on by the impact of the Gramm-Rudman-Hollings Deficit Reduction Act, which have caused disruptions in appeals processing. BVA staffing levels for fiscal year 1985 stood at 437 Full Time Equivalent Employees (FTEE), dropped to 419 FTEE in fiscal year 1986, dropped again in the beginning of 1987 to 397 FTEE before rising back to 419 FTEE by the end of the year. PVA has long been concerned about the impact of across-the-board staffing cuts in the VA, whether they impact on Health Care, Research or Benefit Delivery. While the Board has been able to compensate for these staffing fluctuations, these changes in personnel levels do have a serious impact on the potential number of sitting boards, management and efficient production of the Board as a whole.

Attachment #2 only depicts decisions made by the Board, not the total number of cases pending in any given year. With this in mind, we believe it is important to note that while the total number of pending cases mentioned above has remained fairly constant over the past three fiscal year, there has been a slight decline in the number of decisions reached.

PVA attributes this decline, shown on "Line T" as being attributable to certain significant efforts on the part of the Board to improve the quality and thoroughness of their appeal reviews and better documentation of decisions. We understand that the implementation of certain quality initiatives in fiscal year 1986 resulted in an average 10% increase in length of decision per case resulting from increased attention to the details of each veteran's claim. While obviously having a certain negative impact on appeals production, these quality initiatives, PVA believes, are laudable. They are measures which can only improve the confidence of the veteran in the VA claims adjudication process and insure a fairer hearing and equal justice for all veterans. We also note, while there is still room for improvement, BVA appeals processing time has remained fairly constant since fiscal year 1984.

FY1984	-	132 days
FY1985	-	129 days
FY1986	-	126 days
FY1987	-	134 days

As "Line D" on the chart indicates, the number of denied appeals has decreased over the same period while the number of allowed appeals has remained relatively constant.

Mr. Chairman, PVA would like to address two concerns in response to your invitation to address the quality of the appeals question at both VA Field Stations and the BVA.

First, during the third quarter of fiscal year 1987, PVA began to receive multiple decisional documents (decisions) from the BVA for single cases. When asked about this change in procedure, the Chairman of the BVA replied that the multiple decisions were designed to make it easier for the veterans to review and understand the many complex areas of their appeal determination. In the past, the BVA would render only one decision per case, irrespective of the number of issues involved.

Under this procedural change, it is possible to receive multiple decisions in a single case since the case may be subject to different decisions based on the different nature of the issues being appealed. For instance, when this takes place, one issue being allowed and another denied, the decisions are recorded by the BVA as an allowance and a denial. In previous years, only the allowance would be counted where a single decisional document per case was generated.

The number of decisions generated, therefore, is not truly reflective of the actual case output of the BVA. By reporting the increasing numbers without indicating that they represent only decisional documents rather than cases, one might perceive that the BVA is disposing of more cases than it actually is.

We wanted the Subcommittee to be aware of this change in monitoring future BVA decision totals. PVA will continue to record our decisions under the old method, for the time being, and will be comparing our year-end figures with those reported by BVA to determine if there is any substantial difference between the two.

Second, as "Line R" on attachment 2 indicates, the BVA has experienced a sharp increase over the past three fiscal years in the number of cases remanded to the regional offices for further development, review and determination. PVA is deeply concerned about this rising remand rate. It is another clear example of the inadequacies we have observed at the Field Office level which have the potential to cause errors, delay claim processing, and further frustrate the veteran seeking a timely review of his or her claim.

Increasingly, a number of claims are being sent forward under appeal to the BVA without proper preparation. Others are being sent to Washington which could have been, and should have been, resolved at the Regional Office level. Careful attention should be paid in discovering the actual cause of these problems.

PVA has testified before this Subcommittee previously that part of this problem lies in severe staffing shortages. The Administration has attempted to justify proposed cuts in FTEE for the Department of Veterans Benefits (DVB) citing declining workload caused by decreasing demand and on-going "efficiencies" in the claims adjudication process. On analysis, we find these arguments shortsighted and unsubstantiated from our oversight position. Any reported decrease in workload within DVB must be measured not only by the number of veterans' claims pending, but also by the complexity of those cases being adjudicated on a day-to-day basis by an already overworked and overtaxed DVB staff.

These claims come from many sources: The older veteran facing retirement on a fixed income, the former prisoner-of-war seeking compensation under new presumption legislation, and the Vietnam veteran seeking compensation for post-traumatic stress disorder, to name but a few. All these veterans require and deserve careful attention and consideration. An overworked and overtasked VA claims adjudication staff can only operate in an atmosphere where numbers and quantity of claims processed become more important than quality and careful consideration of those claims. Judging by the dramatically increasing remand rate, too many errors are obviously being made at the Field Office level. Again, those errors not only impact on the workload of the Board of Veterans' Appeals, but cause severe inconvenience to the veteran.

PVA appreciates the action of this Subcommittee in restoring proposed cuts in DVB staff funding. We applaud your interest in the VA's appellate process in holding these hearings on an issue so important to all America's veterans. We recommend that the Committee closely monitor all VA adjudication and appeals workloads to insure that the VA maintains the highest standards. If PVA can be of any assistance to you, Mr. Chairman, or to the Subcommittee in this process, please do not hesitate to let us know.

ATTACHMENT #1

BOARD OF VETERANS APPEALS/PVA CASES
1977-1987

FY	ALLOWED	DENIED	REMAND	TOTAL	OTHER
77	12.7%	71.1%	15.7%	33,146	150
78	12.5%	73.6%	13.4%	35,560	174
79	12.7%	73.1%	13.6%	34,755	217
80	12.4%	72.4%	14.4%	33,748	282
81	12.4%	72.6%	14.3%	33,187	274
82	13.0%	71.0%	15.2%	35,464	294
83	13.7%	69.9%	15.5%	38,212	379
PVA	24.1%	52.6%	20.7%	343	9
84	13.8%	70.4%	14.9%	43,660	404
PVA	20.3%	58.8%	19.5%	632	9
85	13.3%	69.3%	16.3%	44,780	493
PVA	19.8%	58.6%	20.0%	781	13
86	12.8%	67.2%	18.8%	41,477	526
PVA	15.8%	58.1%	24.7%	849	12
87*	12.9%	65.1%	20.6%	29,264	418
PVA*	15.8%	57.1%	24.9%	1027	23

Totals above, and averages on Attachment 2, do not include "OTHER" appeals which were dismissed or withdrawn.

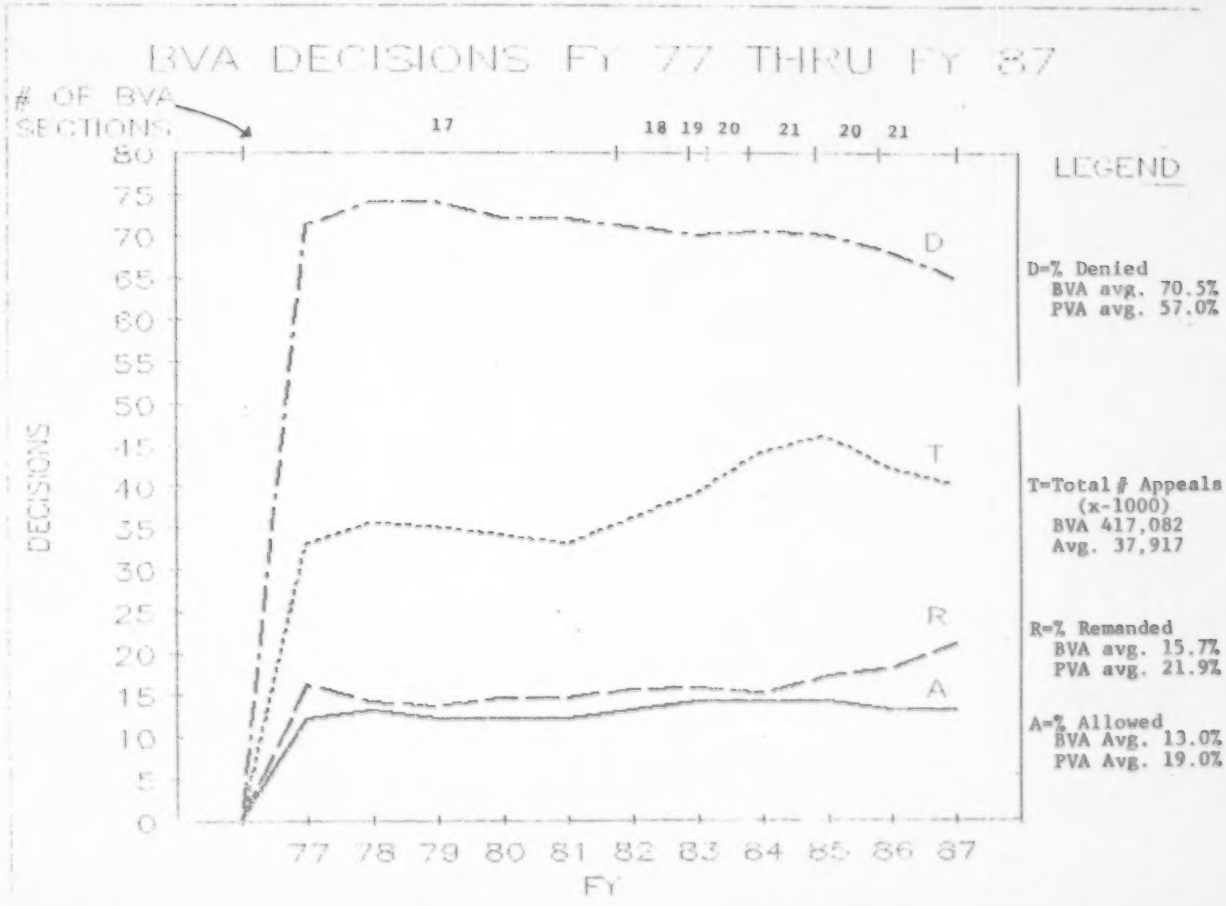
* = Includes first three (3) quarters of FY 87 only.

BVA averages FY 77 thru 87 (*).

APPEALS	ALLOWED	DENIED	REMAND
37,588	13.0%	70.5%	15.7%

PVA averages FY 83 thru 87 (*).

726	19.0%	57.0%	21.9%


BVA DECISIONS FY 77 THRU FY 87
OF BVA SECTIONS
17
18 19 20
21
20
21
DECISIONS
80
75
70
65
60
55
50
45
40
35
30
25
20
15
10
5
0
D
T
R
A
77 78 79 80 81 82 83 84 85 86 87
FY
LEGEND
D=% Denied
BVA avg. 70.5%
PVA avg. 57.0%
T=Total # Appeals
(x-1000)
BVA 417,082
Avg. 37,917
R=% Remanded
BVA avg. 15.7%
PVA avg. 21.9%
A=% Allowed
BVA Avg. 13.0%
PVA Avg. 19.0%

STATEMENT OF
RICHARD F. SCHULTZ
ASSOCIATE NATIONAL LEGISLATIVE DIRECTOR
DISABLED AMERICAN VETERANS
BEFORE THE
SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE
OF THE
HOUSE COMMITTEE ON VETERANS AFFAIRS
October 6, 1987

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

On behalf of the more than one million members of the Disabled American Veterans and its Ladies' Auxiliary, I am pleased to appear here today to present the views of our organization on the operation of the Board of Veterans Appeals (BVA).

At the outset, Mr. Chairman, I wish to commend you and the members of the Subcommittee for holding this oversight hearing. Clearly, this reflects the sincere interest and concern of the Subcommittee for the manner in which our government assures that our nation's disabled veterans, their dependents and survivors, receive the VA benefits to which they are legally entitled.

As you know, Mr. Chairman, the DAV's primary interest is in the welfare of America's service-connected disabled veterans and their families. However, DAV services are not restricted solely to service-connected veterans, as we do offer counseling and representation to all veterans, their dependents and survivors, in any claim they may pursue for benefits administered by the Veterans Administration.

In order to provide such services to our nation's veteran population and their families, the DAV employs some 251 full time, professionally trained, National Service Officers (NSOs) located throughout the country. DAV NSOs are physically located in VA regional offices to provide representation to those veterans who desire our services.

To insure that each individual VA claimant receives complete and thorough DAV representation throughout the claims processing system, the DAV also maintains a National Appeals Office here in Washington, D.C. This office is staffed by nine highly skilled National Appeals Officers (NAOs) whose primary responsibility is to assure that appeals initiated by DAV National Service Officers located in VA regional offices are clearly articulated to the Board of Veterans Appeals. National Appeals Officers also file requests for reconsideration of Board of Veterans Appeals decisions where we believe there has been an error in the Board's decision.

Mr. Chairman, as you know, "The mission of the Veterans Administration is to serve America's veterans and their families with dignity and compassion and to be their principal advocate in insuring that they receive the care, support and recognition earned in service to this nation." Also, the VA's Department of Veterans Benefits (DVB) is charged with the responsibility of insuring "that an appropriate level of benefits is provided within the law to eligible veterans and beneficiaries."

In order to assure that DVB, through its regional offices, is granting all benefits authorized by law to veterans, their dependents and survivors, there exists a Board of Veterans Appeals. The objectives of BVA appellate programs as outlined in MBVA-1, Part I, are as follows:

1.04 Objectives of the Appellate Program

A. Major. Major objectives is to equitably decide appeals under all laws administered by the VA, with sympathetic understanding and as expeditiously as possible consistent with quality, in order to grant all benefits to which veterans and their dependents are entitled.

B. Specific. Specific objectives are:

1. To promulgate quality decisions which are equitable, comprehensive, fully reasoned and self-sustaining.

2. To maintain a high level of promptness in deciding appeals consistent with the quality of decisions expected of an appellate agency of last resort.

Mr. Chairman, aside from an administrative service which handles the support functions and activities, BVA appeals are primarily addressed by a Professional Service presently composed of 21 board sections. Each board section is composed of three members: a chief member (attorney), a medical member (physician), and a legal member (attorney). In addition, each section has assigned to it approximately six "attorney reviewers" and a secretary.

Quality Review

In an effort to assure that our nation's veterans and their families receive fair and equitable decisions on their appeals, the Board of Veterans Appeals has in place a two level quality control system.

Initially, all BVA decisions are subject to a review by the Appellate Index and Retrieval Staff (AIRS). This staff, composed of attorney counselors from all board sections on a rotating basis, has the primary responsibility to conduct an editorial review looking for typographical and format errors. Cases found to be in error are then referred to the Office of Quality Review.

The Office of Quality Review, consisting of two Deputy Vice Chairmen and a secretary, review all cases referred to them by AIRS, as well as certain other categories.

During Fiscal Year 1987 the Board of Veterans Appeals has set a goal to subject at least 15% of all decisions to the second level of review. During the first three-quarters of Fiscal Year 1987, more than 17% of BVA's decisions were reviewed in this second level.

Mr. Chairman, we believe the Board of Veterans Appeals' quality review system represents a genuine effort on their part to assure that our nation's veterans receive fair and equitable treatment under the laws administered by the VA.

Timeliness

Mr. Chairman, as you know, the caseload of the Board of Veterans Appeals has continued to increase over the years. In an effort to alleviate the increasing number of backlogs, Congress took action which resulted in the passage of Public Law 98-223. This law, in part, provided for an increase in the number of Board members from 50 to 65, representing a 30% increase in Appeal Board membership. While the problem of backlogged cases at BVA has abated somewhat, the time it takes veterans to receive a decision on their appeals (from Notice of

Disagreement through final action by BVA) continues to remain unacceptably high (418 days for the first three-quarters of Fiscal Year 1987).

Mr. Chairman, the major portion of the delay in processing appeals rests not with the Board of Veterans Appeals, but at the VA regional office level. Of the 418 days noted above, 284 days are spent at VA regional offices and 134 days at BVA. In this regard it is significant to note that regional offices, since Fiscal Year 1979, have experienced a 30% reduction in DVB FTEE, without a corresponding decrease in workload.

Remands

Mr. Chairman, an area of concern to the DAV is the high number of cases being remanded to regional offices by the Board of Veterans Appeals. During the first three-quarters of Fiscal Year 1987, 20.6% of all cases received at BVA were returned to regional offices for additional action.

While there are several reasons for a case to be remanded for further development, the most common is the failure of VA regional offices to obtain current examination and medical records from VA medical care facilities or evidence from private medical sources.

Also, it is important to note that during the first three-quarters of Fiscal Year 1987, 20.2% of all cases remanded by BVA to regional offices were subsequently allowed by those offices. Simply put, one of every five remanded cases should never have been sent to BVA. This figure, in our opinion, represents the pressures being placed on regional offices to produce more cases with less FTEE.

As previously mentioned, DVB nationwide has experienced a 30% reduction in staffing at regional offices since 1979 without a corresponding decrease in caseload. As a result of the loss FTEE by DVB, we are seeing an increase in the number of appeals being filed by VA claimants. (BVA workload data reveals that appeals received in Fiscal Year 1986 were nearly 22% higher than Fiscal Year 1979.)

Additionally, we are concerned that the degree of training currently being provided to DVB's compensation and pension personnel is inadequate. We understand that approximately $150,000 annually is being spent by VA Central Office on the training of Rating Board and other adjudication personnel. This figure is woefully insignificant. Lack of adequately trained personnel, we believe, is definitely a factor in the increasing number of appeals being filed by VA claimants and their representatives.

Mr. Chairman, in an effort to reduce the length of time VA claimants must wait to receive a decision on their appeal and to increase the quality of the cases being sent to the Board of Veterans Appeals, we offer the following suggestions:

1. Increase FTEE at regional offices;

2. Provide an adequate level of funding for a greater degree of training for regional office Rating Board and adjudication personnel; and

3. Conduct an in-depth study of cases remanded to regional offices by BVA.

In conclusion, Mr. Chairman, in our opinion, an increased FTEE at DVB and adequate funding for training of regional office adjudication personnel will greatly assist the VA in assuring that veterans and their families receive the benefits to which

they are legally entitled. We believe that by taking this action, veterans' appeals will be processed in a more expeditious fashion and the rate of remands directed by the Board of Veterans Appeals will be significantly reduced.

This concludes my statement, Mr. Chairman. I again wish to thank you and the members of this Subcommittee for allowing the DAV to present its views on this most important subject.

DAV

Motto: "If I cannot speak good of my comrade, I will not speak ill of him."

DISABLED AMERICAN VETERANS

NATIONAL SERVICE and LEGISLATIVE HEADQUARTERS
807 MAINE AVENUE, S.W.
WASHINGTON, D.C. 20024
(202) 554-3501

October 15, 1987

Honorable Douglas Applegate, Chairman
Subcommittee on Compensation, Pension
and Insurance
House Veterans Affairs Committee
335 Cannon House Office Building
Washington, DC 20515

Dear Congressman Applegate:

During the October 6, 1987, hearing held before the Subcommittee on Compensation, Pension and Insurance of the House Veterans Affairs Committee, Representative Lane Evans requested that I furnish the Subcommittee with information concerning DAV National Appeals Officers' requests for reconsideration of Board of Veterans Appeals' decisions.

The following information is therefore provided.

During a 12 month period in 1985 and 1986 our National Appeals Officers requested reconsideration of 194 Board of Veterans Appeals' decisions. Of these cases, 23 were allowed, two were remanded to the agency of original jurisdiction and four decisions were vacated. Thirty-six of the 194 reconsideration requests by DAV National Appeals Officers dealt with a total evaluation due to individual unemployability (Code 18) claims. Two of the 36 reconsideration requests resulted in the granting of individual unemployability benefits and four decisions were vacated for de novo review.

Trusting that Representative Evans' inquiry has been answered, I remain,

Sincerely yours,

Richard F. Schultz

RICHARD F. SCHULTZ
Associate National Legislative Director

RFS:am

cc: Cong. Lane Evans

STATEMENT OF

GORDON R. THORSON, SPECIAL ASSISTANT
NATIONAL LEGISLATIVE SERVICE
VETERANS OF FOREIGN WARS OF THE UNITED STATES

BEFORE THE

SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

WITH RESPECT TO

THE OPERATION OF THE BOARD OF VETERANS APPEALS

WASHINGTON, D. C. OCTOBER 6, 1987

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

Today, I appear before you to represent the viewpoint of the Veterans of Foreign Wars of the United States. As Special Assistant in our organization's Legislative Service, it is my responsibility to accurately project the consensus of opinion of our membership as it pertains to the subject of this hearing.

The Board of Veterans Appeals (BVA) was created in 1933 and established as the final appellate authority over all claims for VA benefits except insurance. The structure of the BVA is well-known to this Subcommittee and currently includes a chairman, vice chairman, deputy vice chairmen and 21 board sections. Each board section has three members to include: two attorneys and one physician. Their activities are supported by a complement of several staff attorneys who review appeals, conduct necessary research and prepare tentative decisions for consideration by the Board Section.

Any veteran who disagrees with a benefit decision made by the Veterans Administration (VA) has the right to formally question that decision. The VA must when requested by the claimant explain why, how and on what legal basis their decision was made. If the veteran claimant still disagrees with the Veterans Administration, he has the right to appeal the decision to the BVA. When a veteran advances his appeal to the BVA, he strongly believes that his case is meritorious and should be allowed. As such, every effort should be made to ensure that each claim is given the attention necessary to allow a thorough and fair decision based on an accurate interpretation of law and regulation.

Once an appeal is advanced to the BVA, the Board Section conducts a complete review of the veteran's entire claim and all documentations contained in the claim's folder. When the review is completed and a final decision is made, the Board will issue a written decision which includes a listing of all pertinent laws and regulations, all findings of fact, the conclusions of law and the stated reasons for the decision. If it is felt that further development is necessary, the Board will delay making a final decision and return the case (remand) to the originating VA Regional Office (VARO) for further development. If after securing the evidence requested in the remand action the VARO still refuses to allow the benefit, the case is then returned to the BVA for final appellant action.

The Board of Veterans Appeals is often referred to as the "Supreme Court" of veterans' benefit claims. The BVA is the final authority or the "court of last resort" for a veteran's claim against the government, thus, it becomes abundantly clear that every effort must be made to ensure that such a claim is given a comprehensive and thorough review thereby ensuring fair and just treatment under the law.

With respect to this oversight hearing on the Board of Veterans Appeals, the Subcommittee's letter of invitation to the VFW detailed the subject matter to be discussed at this hearing to include:

1. timeliness of the appeals process;
2. backlogs on pending appeals;
3. staffing of the BVA; and
4. quality of the appeals function at both the Field Stations and BVA levels.

We commend the Subcommittee for holding this hearing and for the excellent job it has done overseeing the operations of the BVA. Now, we will examine each of the above-stated points of discussion.

The Veterans of Foreign Wars has reviewed the current status of the BVA with the Chairman of the Board of Veterans Appeals and the VFW Chief of Appeals. We are very pleased with the results of our discussions. Current statistics indicate that the BVA is maintaining an acceptable level of timeliness as their current response time is approximately 135 days. Response time is calculated from the date an appeal is certified to the Board until the date of the Board's decision. After noting the number of appeals advanced for BVA consideration and the number of board sections now in place, it is our considered opinion that the BVA is handling the case load in a most timely fashion.

The VFW recognizes that the BVA is making every effort to expedite final decisions once the case is certified and received by the Board. However, before an appeal is sent to the BVA much time is needed to fully develop the appeal, statistics indicate that on the average 287 calendar days are spent by the VAROs perfecting an appeal. Therefore, it takes on the average 422 days, or approximately 14 months, from the time the veteran initially files the "Notice of Disagreement" with a VA decision until he finally receives a decision on the appeal. The BVA renders a final decision on over 42,000 cases per year utilizing only 21 board sections with each section working approximately 2,000 hours per year. The figures indicate that each board section is producing one final decision every working hour. After considering all factors, it appears that the BVA is performing its function in a prompt fashion. Our other main concern, of course, is that due process is protected and sufficient time is taken to allow for a quality decision. We will have more to say on the issue of quality later in this testimony.

Our observations indicate that the previous problem the Board was experiencing with backlogs is now under control and a more manageable, even number of pending appeals is steadily moving through the system. The average number of pending decisions on hand has now stabilized at approximately 15,500 at any given time. This again, appears reasonable considering the number of sections and the size of the BVA support staff now in place reviewing appeals and rendering decisions.

Now, we will discuss <u>quality</u>. Ideally, a veteran claimant will receive a just decision, rendered in a timely manner, from the BVA and the VA. Timeliness is important but not nearly as important as a thoroughly reviewed and properly considered final decision--a quality decision. We can understand delays in timeliness, but we should never allow the pursuit of timeliness to overshadow the absolute need for first-class quality decisions.

The VFW believes the BVA is making a concerted effort to continue and improve the quality of their final product. The BVA's quality review program is designed to examine every decision made by a board section, analyze decisions found lacking and correct any significant errors. The VFW must compliment the Board on this program and ask that they continue to strive for the best possible decision and allow any reasonable doubt in favor of the veteran.

The quality of the appeals function at the Field Stations (VAROs) is also a subject of this hearing. As we alluded earlier in this testimony, an average of 287 calendar days or over two-thirds of the time needed to completely process an appeal to final resolution is spent at the VARO, before the appeal is even certified to the BVA. This appears to be a very long processing time and certainly contributes to the discontent often voiced by veterans waiting for a final decision. Certainly, some form of time constraint could be put in place to standardize the amount of time expended processing an appeal prior to the final certification to

the Board. We realize that the VA's Adjudication Division has undergone some extensive staffing reductions in the past few years and this would logically impact on the timeliness and the quality of their final product. The VFW testified on this problem May 7, 1987, when we appeared before this Subcommittee and reported the results of our survey of VFW Service Officers stationed at 58 VAROs across the country: "Our VFW Service Officers overwhelmingly suggest that sufficient staffing and training be provided at every VARO to ensure that every adjudication activity is able to provide the veterans they serve with a timely response and a quality product."

There is another indication of a possible quality problem at Veterans Administration Regional Offices, recent statistics show a steady increase in the BVA remand rate from 14.9 percent in FY '84 up to 20.6 percent in the first three quarters of FY '87. Simply put, remanded cases are appeals that are lacking in development. The VA should take a good hard look at VAROs that are showing a high remand rate and take necessary steps toward improving the quality of their decisions.

Veterans fought to preserve the very system that is now charged with the responsibility of dispensing justice. Our nation's veterans deserve to receive a thorough equitable, and just resolution of their claim for benefits.

The VFW does have two final concerns:

First of all, we think it's important that the BVA make every effort to consolidate their operations. At the present time, six board sections are not housed in the main building because of space allocations. A shortage of space is given as the reason why six board sections must be outstationed, but it's interesting to note that other less vital VA operations continue to occupy space in the BVA Headquarter's building. The situation of outstationed board sections should not be tolerated. If the Board cannot be consolidated into its current location, then perhaps it is time to start looking at alternative sites.

Our second concern, also deals with space allocation. Currently there are only two hearing rooms available for personal hearings. We again call for an additional hearing room. There is a continuing backlog on personal hearings before the BVA, veterans must, oftentimes, wait an additional 2-3 months for a chance to personally state their case. A third hearing room would complement the recent expanded number of board sections and help expedite the appeals process.

In closing, Mr. Chairman, in our opinion the BVA is making a strong effort to process appeals in a timely manner while increasing review procedures to improve the quality of their final decisions. We believe that with cooperation from the VA Central Office, the quality of the appeals sent to the Board from the VAROs will improve and the space needed for consolidation will become available through relocation of certain VA activities.

This concludes my testimony. Thank you.

79-031 O - 87 - 5

Statement of

The American Legion

1608 K STREET, N. W.
WASHINGTON, D. C. 20006

by

PHILIP R. WILKERSON, ASSISTANT DIRECTOR
NATIONAL VETERANS AFFAIRS AND REHABILITATION COMMISSION
THE AMERICAN LEGION

before the

SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE
COMMITTEE ON VETERANS AFFAIRS
U. S. HOUSE OF REPRESENTATIVES

on

OVERSIGHT OF THE BOARD OF VETERANS APPEALS

October 6, 1967

STATEMENT OF PHILIP R. WILKERSON, ASSISTANT DIRECTOR
FOR INFORMATION MANAGEMENT
NATIONAL VETERANS AFFAIRS AND REHABILITATION COMMISSION
THE AMERICAN LEGION
BEFORE THE SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE
COMMITTEE ON VETERANS AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
OCTOBER 6, 1987

Mr. Chairman, The American Legion appreciates the opportunity to offer comment on the current operations of the Board of Veterans Appeals.

For the purpose of this statement, we shall focus principally on several areas of concern with respect to the disposition of cases by the Board and the development of appeals at the regional office level. Our comments will be limited to this organization's experience with the Board of Veterans Appeals.

Under title 38, United States Code, the Board of Appeals stands as the final arbiter in all questions on claims involving benefits administered by the VA. We, therefore, believe, Mr. Chairman, it is essential that oversight hearings such as this be periodically held to review the Board's overall performance in terms of both quantity and quality. Such public examination helps ensure that those claims coming before the Board receive a full, fair, and compassionate review, as provided by law and regulation.

Before proceeding with a discussion of the Board of Veterans Appeals we wish to briefly touch upon several problems in the development of appeals at the regional office level as these impact directly upon the workload of the Board.

In an oversight hearing before this Subcommittee in May of this year, The American Legion expressed the judgment that the continued reductions in field station personnel in recent years have had a direct and adverse impact not only upon the timeliness in the processing of benefit claims, but the quality of the decisions on claims for benefits as well. One of the key factors contributing to the noted decline in quality has been the result of large numbers of retirements among senior adjudicators and rating board members known in the VA as the "Class of '46". These individuals, who joined the VA in the period immediately following WWII, are now completing or have completed their government careers. Although, in the main, those employees who are replacing them are dedicated and hardworking, the level of expertise and knowledge cannot be replaced or duplicated overnight. In the course of this hearing, we shall focus upon the "qualitative" aspect of those cases in which an appeal is initiated before it is considered by the Board of Veterans Appeals.

The American Legion believes one measure of the gradual erosion in the quality of rating decisions is the increased number of claims in which a notice of disagreement has been filed. Although the percentage of such cases is relatively small in comparison to the total number of claims adjudicated by the regional offices in the course of a year, the fact remains that the trend is upward and not downward. Many types of claims have become more complex and require more man-hours to develop and adjudicate. It is reported that three-fourths of the appeals involve the issues of service connection and increased rating for service-connected disabilities. In 1986, a total of 63,800 notices of disagreement were filed and ultimately 35,500 (55%) were certified to the Board of Veterans Appeals. For the first three quarters of FY 1987, the number of claims in which a notice of disagreement has been filed has exceeded 54,500. At that rate, the total number of appeals coming before the Board will undoubtedly exceed the total for last year.

We also believe this erosion in quality is reflected in the increasing number of cases remanded back to the office of original jurisdiction for additional specified action by the Board. We understand that a valid difference of opinions as to the need for additional development in a particular case may exist between the Board and the regional office. However, the reasons for a remand vary, i.e. a need to ensure the claimant has received full due process; the VA medical examinations or reports may be considered inadequate, or additional information or evidence should be developed from the claimant or other sources. There also may be a need to have the veteran hospitalized for a clarification or reconciliation of diagnoses. In FY 1986, of the 42,000 cases considered by the Board, 18.8% of the appeals were remanded for additional action. It is of particular concern that for the first three quarters of FY 1987, the percentage of remands was in excess of 20%.

Even though the claimant bears the ultimate responsibility for the preparation and filing of his or her claim, the VA shares that responsibility. The law, in title 38, speaks

of the VA's obligation to assist a claimant in developing the facts pertinent to his/her claim and to render a decision which grants the claimant every benefit that can be supported in law while protecting the interests of the government. This is particularly important in those cases where a claimant is not represented by an accredited representative, agent or attorney. In our opinion, the statistics strongly support the conclusion that fully 20% of claims considered by the BVA had not been fully developed and fairly adjudicated by the regional office. It should be noted that of those cases remanded upon completion of the specified action and further adjudication, benefits were granted in whole or in part in more than 26%. Unfortunately, we do not have statistics on the disposition of remanded cases returned to the BVA.

In discussing the problem of development of appeals at the regional office level with our service officers, many expressed a recurrent complaint of rating boards or adjudicators denying complex claims rather than undertaking additional development. The reason given (informally) was "let Washington (the BVA) do it." There was a fear of criticism by VA Central Office, if the case was allowed. This rationale is unacceptable to The American Legion. Claimants should not be forced into the lengthy process of an appeal for the sake of expediency.

Another situation which gives rise to potentially unnecessary appeals is where the claimant or accredited representative has formally raised a question as to the interpretation or application of the pertinent regulations or manual provisions, or there is a highly complex medical question. Seldom will the regional office accede to a request for an advisory opinion from the C&P Service or the Department of Medicine and Surgery. Again, we strongly feel that claimants should not be forced into the lengthy process of an appeal, since such expert or advisory opinions cannot be obtained from sources outside of the agency. It is felt regional offices must fully shoulder their responsibility to the claimant in resolving such issues.

With regard to the operations of the Board of Veterans Appeals, The American Legion at the oversight hearing in October 1985 expressed particular concern with regard to disposition of claims involving PTSD. It was our judgment that too many valid claims were being denied by the regional offices, and these denials were generally sustained by the BVA. Policy guidelines and instructional manuals on this subject, including the revised Physicians Guide For Disability Evaluation Examinations of the Department of Medicine and Surgery were not being adhered to in both the development and the adjudication of claims alleging psychiatric problems associated with combat experiences. We also commented upon the general lack of interest or cooperation in undertaking development of information from official sources which should have been available to the VA psychiatric examiner and adjudicators, as well as the Board of Veterans Appeals. Since then Department of Veterans Benefits, Department of Medicine and Surgery and the Board of Veterans Appeals have increased staff training and coordination on this subject. From our experience, in the interim, there does not appear to have been any significant improvement with regard to the VA's overall performance on PTSD claims. One of the recurrent problems, apart from the absence of certain military information is VA psychiatric examination reports which do not contain adequate preservice and military histories. Nor is adequate attention given to the individual's military duties and combat or life threatening experiences. The necessity of having a full and complete examination report for adjudication purposes is highlighted by the fact that Chapter 20 was added to the Physician's Guide to specifically determine and report the psychiatric sequelae of military duty in a combat zone. We would point out that these guidelines are far more comprehensive than those for the examination of other mental disorders as described in Chapter 14 of the Guide.

The VA reports in the period since June 1985 approximately 20,300 PTSD claims have been adjudicated. Of these, 55% were approved. This includes claims for service connection as well as increased rating. Of those cases subsequently considered by the BVA, the allowance rate for the first three quarters of 1987 was 15% which was slightly higher than the average allowance rate for all type of claims of 12.9% in the same period. We continue to believe that many more cases should have been allowed, based upon the information and evidence of record. We also believe there is some "good news and some bad news" in the Board's remand rate of 37.4% for PTSD claims. On the one hand, it is essentially favorable action in that further development was felt to be necessary before final appellate consideration was undertaken. As a result, 23.6% of these remanded cases were allowed by the regional office after such development. However, it also reflects to us what is an unacceptably large percentage of such cases being denied and subsequently certified by the regional offices without certain essential development having been accomplished. In point of fact, action such as scheduling adequate psychiatric examinations, development of pertinent military records as to a probable stressor, and other relevant evidence should have been developed in the course of adjudication or in the appeal stage, prior to certification.

Although much attention has been focused on the issues related to due process in appeals, there is an additional regulatory provision which authorizes the Board of Appeals to undertake reconsideration of a particular denial decision upon the allegation of an obvious error in fact or in law. A request for such reconsideration can be made by the claimant or on their behalf by the accredited representative. Under this procedure, the entire record will be reviewed again by the Board that made the original decision, as well as a newly empaneled Board section. Another decisional document will be drafted and provided the claimant, and representative if applicable, setting forth the reason(s)) for reaffirming or changing the previous decision. It is signed by all participating Board members. In FY 1986, 162 reconsiderations were undertaken, of which 6.1% were allowed and 6.9% remanded for further development. In the first three quarters of FY 1987, 94 reconsiderations had been undertaken with 9.8% allowed and 5.1% remanded. We believe this course of action provides an additional and essential legal remedy to the claimant in the prosecution of his or her claim.

In FY 1986, the Board of Appeals released approximately 42,000 decisions. Through the operation of 21 sections, the current response time by the Board is 134 days which is unchanged from last year. Claimants are entitled to a decision on their appeal in a timely manner. We wish to recognize the Board's efforts to improve the content of the decisional document and to make it more informative. We believe the Board should always make every effort possible to ensure all decisions reflect a comprehensive review of the facts and evidence, and that each and every claim has received the full benefit of due process and reasonable doubt, regardless of workload.

The American Legion has offered what we believe to be constructive criticism of certain actions of the regional offices and the Board of Veterans Appeals. However, there is one key element of the Board's operation which again deserves special commendation. This involves cases in which there are personal hearings. Such hearings are scheduled upon the request of the claimant to afford them the opportunity to personally present testimony and evidence to the Board. Great effort is taken to clarify whether or not an individual is, in fact, requesting a hearing and whether or not one is desired before the Board in Washington, DC. Our experiences continues to reflect that personal hearings are for the most part conducted in an informal and nonadverserial atmosphere. This is extremely important as it accords the claimant and the accredited representative ample opportunity to present the pertinent facts and issues in the case. Equally important in hearings such as these is the personal interest expressed by the individual Board members. In most cases, pains are taken to try and assist the claimant in bringing forth essential information and to clarify certain points in the case. At the conclusion of the hearing, the claimant can feel that they have had their day in court and spoken directly to those who will ultimately be deciding the appeal. The American Legion believes the performance of the Board of Appeals in this regard has been particularly noteworthy.

Mr. Chairman, that concludes my statement.

The American Legion
For God and Country

★ WASHINGTON OFFICE ★ 1608 "K" STREET, N.W. ★ WASHINGTON, D.C. 20006 ★
(202) 861-2700 ★

November 17, 1987

House Veterans Affairs Committee
Subcommittee on Compensation,
Pension and Insurance
Room 337
Cannon House Office Bldg.
Washington, DC 20515

Dear Sirs:

This is with reference to the Legion's testimony before the Subcommittee on October 6, 1987, concerning oversight of the operations of the Board of Veterans Appeals.

During the hearing, Congressman Evans requested for the record information as to The American Legion's position on the issue of Judicial Review of the decisions of the Administrator of Veterans Affairs. We are herewith enclosing a copy of the Resolution No. 140 of the 1986 National Convention which is our current mandate, in response to his request.

If additional information is desired, please let me know.

Sincerely,

PHILIP R. WILKERSON
Assistant Director for Information Management
National Veterans Affairs and Rehabilitation Commission

PRW:jap
Encl.

THE AMERICAN LEGION
SIXTY-EIGHTH ANNUAL NATIONAL CONVENTION
CINCINNATI, OHIO
SEPTEMBER 2, 3, 4, 1986

RESOLUTION NO.: 140

CONVENTION COMMITTEE: VETERANS AFFAIRS AND REHABILITATION

SUBJECT: OPPOSE LEGISLATION WHICH WOULD AUTHORIZE JUDICIAL REVIEW OF DECISIONS OF THE ADMINISTRATOR OF VETERANS AFFAIRS

WHEREAS, Certain veterans groups and others strongly suggest that the appeal process as set forth in title 38, United States Code, be changed to permit judicial review in the Federal Courts; and

WHEREAS, The American Legion is committed to the interests and the well-being of all veterans, their dependents and survivors who seek benefits from the Veterans Administration; and

WHEREAS, From the time of its founding in 1919, The American Legion has provided direct assistance to veterans, their dependents and survivors in filing, developing and presenting claims for benefits from the VA without cost to the veteran or other claimant, and without regard to membership in The American Legion; and

WHEREAS, The experience of The American Legion in more than sixty years of claims work has demonstrated that the present system of claims that is administered by VA works to the best advantage of the claimant in that it does not involve cost to the veteran, is not an adversary proceeding and permits the informal presentation of evidence that operates to the advantage of the claimant; and

WHEREAS, There has been introduced in the Congress, legislation that would permit claimants for benefits from VA to institute litigation in the Federal Courts, in furtherance of their claims; and

WHEREAS, Such litigation is presently not permitted by reason of the provisions of section 211(a) of title 38, United States Code, which provisions codify existing law; and

WHEREAS, All claimants seeking benefits from VA have the right as do all citizens, to seek judicial relief in matters involving their constitutional rights; and

WHEREAS, The changes in adjudication of veterans claims included in the pending legislation would mandate and enhance legal adversarial relationship between the Veterans Administration and veterans, requiring that the veteran have an attorney represent him/her in the proceedings; and

WHEREAS, Under this proposal the appeals system would become more rigid, less sympathetic to the veteran, require large expenditures for attorneys' fees, lose the present informality the veteran enjoys, increase the time delays in the appeal process

because of filled court calendars, make the VA an adversary to the people it is supposed to serve; and

WHEREAS, On the basis of its long experience in claims work, The American Legion is convinced that claimants presently receive more consideration under due process within the VA system of adjudication of claims than would be provided by judicial review; and

WHEREAS, The prospect of the claimant paying in any fashion to obtain benefits due him from the Government of the United States as would have to be done in the instance of litigation, is abhorrent to The American Legion; now, therefore, be it

RESOLVED, By The American Legion in National Convention assembled in Cincinnati, Ohio, September 2, 3, 4, 1986, that The American Legion shall continue to oppose the enactment of any measure that would amend 38 USC 211(a), so as to authorize judicial review of the decisions of the Administrator of Veterans Affairs except as presently authorized in 38 USC 755 and 784, and Chapter 37 of such title.

STATEMENT OF

VIETNAM VETERANS OF AMERICA

Presented By

RICHARD E. O'DELL
VICE PRESIDENT
and
CHAIRMAN OF VVA'S
COMMITTEE ON ADVOCACY

and

PAUL S. EAGAN
LEGISLATIVE DIRECTOR

before the

HOUSE VETERANS AFFAIRS SUBCOMMITTEE ON

COMPENSATION, PENSION AND INSURANCE

ON

BOARD OF VETERANS APPEALS

OCTOBER 6, 1987

Mr. Chairman and members of the Subcommittee, Vietnam Veterans of America (VVA) is pleased to have this opportunity to present its views on the VA's Board of Veterans Appeals (BVA). We believe this hearing is timely and once again offers an opportunity to revisit the question of whether or not the apparatus currently in place at the VA is sufficient to provide equitable adjudications for veterans claims. As you know, because VVA finds this apparatus deficient, we believe court review of denied claims is the only practical and reliable way of providing equity. The balance of this statement will point to what we either know or strongly suspect to be specific deficiencies in the VA claims adjudication process at the BVA.

Significant Variances Between Different Sections of the Board of Veterans Appeals

Kenneth E. Eaton, Chairman of the Board of Veterans Appeals, testified at an oversight hearing on the operation of the BVA before the Subcommittee on Compensation, Pension, and Insurance of the House Committee on Veterans Affairs in 1985. Mr. Eaton, in response to a question by Congressman Applegate, stated that "Yes, indeed, it is quite true that there is what I might say is a significant variance between different sections of the Board and how they see these cases..." VVA and even The American Legion have, in the past, pointed out similar problems (see attachment A, footnote 3). During the hearing when Mr. Eaton testified, it would have been very helpful if the "Production Statistics" for each of the 21 sections of the BVA had been placed in the record. These production statistics show the allowance rates, denial rates, and remand rates for each of the 21 sections of the BVA. The statistics are in the form of a one-page report for each quarter. We are informed that they show that for years there has been an extreme differential in allowance rates, denial rates and remand rates between certain sections of the Board that handle very similar cases.

An analysis of the decisions of the BVA which are maintained in the Appellate Index Retrieval System (AIRS) also shows the number of allowances, denials, and remands for each of the 21 sections of the Board. AIRS is

accessible to the public as it is maintained in the library of the Board. However, to develop the statistics compiled in the production reports would require a large amount of time to review all of the decisions. Vietnam Veterans of America is in the process of requesting, pursuant to the Freedom of Information Act, the quarterly production reports showing allowance rates, denial rates, and remand rates for each of the 21 sections of the Board of Veterans Appeals. VVA believes these production statistics will show that the testimony of the Chairman of the BVA, regarding the "significant variances between different sections of the Board" is indeed very significant. It is so significant that it has become very apparent that a higher reviewing authority must be made available in order to protect veterans from these "significant variances" in the decisions on veterans benefits.

Moreover, not only are there variances in the decisions of the Board's sections, but equal and identical decisions are also decided differently (see attachment A, pg 7). This fact, attested to by the Chairman of the BVA, stands in direct violation of federal regulation, 38 CFR 3.101 (see attachment E).

Required Production Quotas

As we understand it from available documentation GS-9 to GS-12 staff attorneys drafting decisions for the 21 sections of the BVA must attain production levels of at least 100 percent before they will typically be promoted to the next higher GS level (see attachment B). The measure of production is based on the amount of time it takes a staff attorney to draft a decision. The specific amount of time is prescribed in the Manual of the Board of Veterans Appeals (see attachment D). Are we to believe that GS-13 attorneys are required to produce more than 100 percent, perhaps 115 percent in order to qualify for a typical promotion? While we cannot be certain that production quotas alone are used to reward or penalize VA staff attorneys at the Board, we have to believe these quotas are a compelling factor.

In any event, as a practical matter, this productivity requirement causes staff attorneys to draft decisions as rapidly as possible. With so much attention on production, it is very easy to compromise the quality of the decision. For example, in cases of service-connection of a disability resulting from the side-effects of medications required for the treatment of a previously service-connected disability, much time is needed for the staff attorney to list all of the medications received by the veteran from the VA and then review the Physicians's Desk Reference in order to determine which medications may have caused a new disorder. Staff attorneys who are trying to maintain their 100 percent or greater production quota may be less inclined to do this research. Further, members of the Board rely very heavily on development of the evidence by the staff attorney.

The pressures of production on staff attorneys are further exacerbated by the fact that the staff attorney apparently receives credit for only one issue in a decision which may contain several other very distinguishable issues, each requiring time to properly evaluate and for which no production credit is given. For example, as in attachment C, the staff attorney only receives production credit for the issue requiring the greatest amount of time to review while the other four issues are assigned no time production value whatsoever (see attachment C and D). If staff attorneys were allowed to receive production credit for each issue set forth in a claim, it seems obvious they would be more likely to give the appropriate attention to each issue.

Inequitable Distribution of the Case Load Among the Staff Attorneys of the Board of Veterans Appeals

Another troubling factor resulting from production quotas is that all too often junior attorneys work on complex multi-issue cases that should be worked on by more experienced senior attorneys. This problem results from the method of distributing cases to staff attorneys. Rather that uniformly categorizing cases by levels of complexity and matching those cases with the

experience levels of the attorneys, too often newer and less experienced attorneys will be working on cases that should be done by the more senior attorneys. There are several reasons for this inequitable distribution of the case load. Senior attorneys at the GS-14 level who are hoping to become members of the Board, are tempted to obtain easier cases, which are euphemistically referred to as "blades", because of the thinness of the veteran's claims folder. The claims folder, as we all know, contains the veteran's medical records and other evidence in support of the claim. Some claims folders can be a foot or more thick. By working on the "blades", the thinner cases, a senior attorney is able to get the high production necessary to obtain a position on the Board. When too many of the senior attorneys are working on the easier cases, this results in newer, less experienced attorneys having to work on those more difficult cases that should have been given to the senior attorneys. Since the junior attorneys are required to attain 100 percent production statistics before promotion, they must work very rapidly on these complicated cases, thereby increasing the risk of error as well as the high probability that evidence will not be evaluated as carefully as it should be. In that regard, once again, it must be remembered that Board members rely very heavily on the work product of the staff attorney who drafted the BVA decision. Further, certain Board members are very interested in high production, we understand, because of the possible receipt of year- end bonuses of several thousand dollars if their section has very high production.

Unwritten Policy Without Force of Law or Regulation Is Sometimes Applied to Claims

In this statement we have already made reference to the term "blades" as it refers to claims folders that require minimum time expenditures for final appellate review. We have also attempted to articulate the significance of these claims folders in an adjudicative environment largely powered by production quotas. This phenomenon has arguably created something of a market place for easy cases. As such, an unwritten policy regarding these "blades" has taken on a greater meaning for BVA employees. These employees

EDUCATION AND TRAINING FOUNDATION - JULY 1987
Page 2

NCC-021 1st year of 2 year project	"An Educational Model for Spinal Injury: Linking VA and Community Resources" Charles Lang, III (Administrative Project Director) Director, Georgia Cooperative Health Manpower Program, Inc. Carl Vinson VA Medical Center Dublin, GA 31021 Helen Bosshart, ACSW (Clinical Project Director) Coordinator, SCI Home Care Program Spinal Cord Injury Service, Augusta VA Medical Center Augusta, GA $9,650	To establish linkages between SCI and non-SCI centers and update knowledge and skills of personnel working with SCI individuals through visiting lectureships at Augusta VAMC, regional workshops at non-SCI sites and community facilities and visiting faculty to non-SCI Centers. Educational modules will be developed.
NSO-022	"Occupational Therapy Graduate Traineeship in Spinal Cord Injury" William C. Mann, Ph.D. Occupational Therapy Department SUNY at Buffalo Buffalo, NY 14214 $7,000	To support one occupational therapy graduate student in an M.S. degree program. The school will build into the physical disabilities curriculum new courses, a research project and clinical experiences in spinal cord injury.
NSP-024	"Post Professional Traineeship" Martha Clendenin, Ph.D., P.T. University of Florida Gainesville, FL 32616 $15,731	To support two physical therapy graduate students in a M.S. degree program. The school will build into the neurological dysfunction specialty track didactic units, a research project and a clinical internship in spinal cord injury.
NCC-027	"The Aging Spinal Cord Injured Veteran - An Educational Program for Health Professionals" J. W. Rowe, M.D. Harvard Medical School Division on Aging 25 Shattuck Street Boston, MA 02115 $13,172	To plan, develop, conduct and evaluate an educational program for health professionals at the Geriatric Research, Education Clinical Center (GRECC) and Spinal Cord Injury Center (SCIS) at the Brockton/West Roxbury VA Medical Center.
NSM-028 1st year of a 2 year project	"Education and Training for a Fellow in Neurorehabilitation, Emphasis on MS" Jack S. Burks, M.D. University of Colorado Health Science Center Denver, CO $17,600	To support a physician in a two-year fellowship training program in neurorehabilitation with special emphasis on multiple sclerosis for board eligible, fully trained neurologists or physiatrists

PARALYZED VETERANS OF AMERICA
Chartered by the Congress of the United States

YALE/PVA CENTER

FOR

NEUROSCIENCE AND REGENERATION RESEARCH

FACT SHEET

BACKGROUND: The Yale/PVA Center for Neuroscience and Regeneration Research is a collaborative venture between PVA, Yale University School of Medicine and the West Haven VA Medical Center, The land for the Center, which is on the grounds of the West Haven VA, was made available to Yale by the VA in a precedent-setting long-term leasing arrangement. In the spirit of this joint effort, the Center, the School of Medicine and the VA will share facilities, expertise, and equipment, thus enhancing the efforts of each.

MISSION: The research that will be conducted at the Center will include basic research into functional regeneration of damaged nerve cells as well as practical research that will help people with spinal cord injury or a disabling disease, such as Multiple Sclerosis (MS), live fuller lives. Research at the Center will focus on the mechanisms underlying functional recovery following damage to the nervous system and on the ways in which recovery of function can be encouraged. Some of the research will be directed toward training future researchers who will develop new approaches to the care of patients with spinal cord injury or disease.

DIRECTION: The activities of the Center will be directed by Stephen G. Waxman, M.D., Ph.D., who will also serve as Professor and Chairman, Department of Neurology, Yale University School of Medicine. Dr. Waxman has distinguished himself throughout his career as a scientist and as a physician deeply concerned about the needs of individuals with spinal cord injury and disease. Since his early years at Harvard Medical School and Massachusetts Institute of Technology, and continuing during his tenure at Stanford Medical School and the Palo Alto VA Medical Center, Dr. Waxman has concentrated his research efforts on the molecular architecture of nerve cells in the brain and spinal cord, and the mechanisms that control growth and regeneration of nerve cells. He has made a number of important scientific contributions to the understanding of functional recovery in a variety of neurological diseases. On a more personal level, Dr. Waxman is a long-time friend of PVA, having been associated with PVA's Spinal Cord Research Foundation (SCRF) almost since its inception ten years ago and in his capacity as a founding member of SCRF's Scientific

Advisory Board. Dr. Waxman is currently a member of the SCRF Scientific Advisory Board and regularly contributes articles for publication in Paraplegia News. In addition, Dr. Waxman has spoken on his regeneration research at past PVA Annual Conventions.

THE FACILITY: The 7,000 square foot facility, which is scheduled for completion in the Fall of 1987, will feature a number of laboratories, one conference room, a resource center for students and fellows and adminisntrative offices. The building will be connected to the West Haven VA Medical Center via an all-weather breezeway. The building is, of course, fully wheelchair accessible. Dedication of the building, and a ribbon cutting ceremony is scheduled for the Spring of 1988.

PERSONNEL AND OTHER RESOURCES: The Center will be staffed by a multidisciplinary group of medical scientists with expertise in neurocytology, experimental neuropathology, immunology, developmental neuroscience and electrophysiology. Scientists working at the Center will have at their disposal the latest technological advances including electron microscopes, special fracture devices and other computerized equipment

CURRENT STATUS: PVA has made a commitment to help fund the center although official commencement of such an agreement awaits finalization of the particulars of the agreement between PVA and Yale University School of Medicine.

Revision Date: September 22, 1987

P V A
SPINAL CORD RESEARCH FOUNDATION
Funded Grants
1985 - 1987

Grant Name, Investigator(s) & Institution	Proposal No.	Total Amount & Date Awarded	No. Years Funded
Development and Regeneration of Afferent Motorneuron Contacts in Rat Embryos Lea Ziskind-Conhaim University of Wisconsin	NBR-489-5	$35,000 (05/85)	1
Lesion Induced Axonal Growth of Ascending Somatic Sensory and Motor Terminations in The Diencephalon Chisato Stanfield (fellow) The Salk Institute	NFR-496-5	$31,472 (05/85)	1
Recovery of Function and Anatomical Repair After Spinal Cord Transections in Newborn and Adult Rats Barbara Bregman University of Maryland School of Medicine	NBR-497-5	$33,723 (5/85)	1
Spinal Cord Regeneration of Descending Locomotor Command Systems in a Lower Vertebrate, the Lamprey Andrew McClellan University of Iowa	$36,855 NBR-501-5 SBR-501-6	Yr. 1: $22,530 (05/85) Yr. 2: $14,325 (05/86)	2
An In-Vivo Model to Assess the Neurotrophic Function of Mammalian CNS Glia Gary Kukes Long Beach VA Medical Center	NBO-506-5	$9,100 (05/85)	1
Study to Determine if Localized Extra-cellular Proteolysis is a Requirement for Successful Regeneration of Nervous Tissue Nurit Kalderon Rockefeller University	$68,750 NBR-508-5 SBR-508-6 TBR-508	Yr. 1: $30,000 (05/85) EPVA Funded Yr. 2: $38,750 (05/86) EPVA Funded Yr. 3: $43,983 (05/87) EPVA Funded	3
Circulation and Metabolism in the Decentralized Spinal Cord Oscar Scremin Albuquerque VA Medical Center	NBC-510-5	$29,700 (05/85)	1
Growth Factors for Cortical Motorneurons Brooke Swearington Massachusetts General Hospital	NFR-514-5	$14,369 (05/85)	1
Development of an Artificial Spermatocele to Treat Infertility of SCI Persons L. Keith Lloyd University of Alabama at Birmingham	NBU-515-5	$33,143 (05/85)	1

Grant Name, Investigator(s) & Instruction	Proposal No.	Total Amount & Date Awarded	No. Years Funded
Laminin in Astrocyte Extracellular Matrix Promotes Axonal Regeneration Jerome Wujek Childrens Hospital Research Foundation	NFR-518-5 SFR-518-6	$62,005 Yr. 1: $29,000 (05/85) Yr. 2: $33,005 (05/86)	Withdrawn f 2nd year
Evaluation of a Novel SCI Model James Cullen (fellow) Research Foundation of S.U.N.Y. Syracuse, NY	NFR-520-5	$2,000 (05/85) EPVA Funded	1
A Collision Block Technique for Micturition Assist: Pre-Clinical Studies J. Thomas Mortimer (sponsors fellowship) Case Western Reserve University	NFU-522-5 SFU-522-6	$73,082 Yr. 1: $28,000 (05/85) Yr. 2: $45,082 (05/86)	2
Skin Temperature in Spinal Cord Injury Related to Skin Breakdown Michael S. Weiss Santa Clara Valley Medical Center	NAO-532-6	$33,620 (11/85)	1
Prospective Randomized Clinical Trial of Thyrotropin-Releasing Hormone (TRH) as a Therapy for Spinal Cord Injury Lawrence Pitts University of California, San Francisco	RAO-542-6	$61,020 (05/86)	1
Respiratory Dysfunction in Spinal Cord Injury: Control of Ventilation in SCI and Respiratory Sensation Reaching Consciousness Robert Brown West Roxbury VA Medical Center	NAO-547-6	$23,838 (11/85)	1
Plasticity in the Injured and Aging Mammalian Spinal Cord Harry Goshgarian Wayne State University	NBR-549-6	$31,428 (11/85)	1
Corticospinal Systems Peter L. Strick The Research Foundation of SUNY Syracuse, NY	NBN-564-6	$51,054 (05/86) EPVA Funded	1

Grant Name, Investigator(s) & Institution	Proposal No.	Total Amount & Date Awarded	No. Years Funded
Spinal Interneurons and the Generation of Locomotion Lloyd L. Glenn Ohio College of Podiatric Medicine	NBO-568-6	$32,725 (05/86)	Withdrawn
Spinal Cord Implants: Immunologic Studies Barry G. W. Arnason University of Chicago	NBR-569-6	$34,788 (05/86)	1
A Study of Phospho Proteins in a Regeneration Central Nervous System Tract Denis Larrivee (fellow) Cornell University Medical Center	NFR-572-6 SFR-572	$92,175 Yr. 1: $39,096 (05/86) EPVA Funded Adjustment $6,000 (11/86) EPVA Funded Yr. 2: $46.479 (05/87) EPVA Funded	2
An Implantable Sensor for Two Degrees of Freedom Position Transduction P. Hunter Peckham Case Western Reserve University	NDF-574-6	$31,316 (05/86)	1
Trial of a 5-Lypoxygenese Inhibitor in Experimental Spinal Cord Injury Lloyd A. Horrocks The Ohio State University Research Foundation	NBO-579-6	$45,760 (05/86)	1
Urinary Bladder Ganglion Reorganization Following Lesions August M. Booth University of Pittsburgh	NBU-585-6	$31,422 (05/86)	1
Fetal Spinal Cord Transplantation into the Chronically Injured Adult Rat Spinal Cord John D. Houle University of Florida College of Medicine	NBR-588-6	$32,540 (05/86)	1
Effect of Age on Axonal Sprouting in the Deafferented Dorsal Horn Peggy Mason (fellow) Massachusetts General Hospital	NFR-602	$23,000 (11/86)	Cancell
Nerve Fiber Growth in Culture on CNS and PNS Tissue Salvatore Carbonetto The Montreal General Hospital Research Institute Montreal, Quebec CANADA	NBR-605	$32,000 (11/86)	1
Chemical Dependence and Spinal Cord Injury Outcome Allen W. Heinemann Rehabilitation Institute of Chicago	NBO-611	$38,016 (11/86)	1

Grant Name, Investigator(s) & Institution	Proposal No.	Total Amount & Date Awarded	No. Yea Funde
Hepatic Oxidative Metabolism in Spinal Cord Injury Jack L. Segal Long Beach VA Medical Center	NAO-619	$32,710 (11/86)	1
Closed-loop Control of Functional Neuro-muscular Stimulation Using Implantable Force Sensors J.A. Hoffer University of Calgary, Canada	NBR-623	$30,991 (05/87)	1
Rapid Neuronal and Glial Changes in the Spinal Cord Harry G. Goshgarian (mentor) Wayne State University	NFR-625	$34,533 (05/87)	1
Neurochemical Correlates of Autonomic Hyperreflexia in an Animal Model Susan L. Stoddard Indiana University Foundation	NBN-633	$37,608 (05/87)	1
The Effect of a Gaba Agonist and a Gaba Antagonist on Motor Recovery Following Subtotal Spinal Cord Lesions Roger M. Harris University of Washington	NBR-635	$33,664 (05/87)	1
Regeneration of Spinal Projection Neurons In a Peripheral Nerve Environment Mary Blair Clark University of Maryland School of Medicine	NBR-645	$40,857 (05/87)	1
The Health And Functional Status of Aging SCI Persons: A Feasibility Study Using Cases From Stoke Mandeville Hospital Gale G. Whiteneck Craig Hospital	NOA-650	$14,967 (05/87)	1
Dorsal Root Axonal Regeneration in Adult Glial Deficient Mammalian Spinal Cord Francis J. Liuzzi (fellow) Case Western Reserve University	NFR-654	$38,340 (05/87)	1
Central Nervous System Regeneration in Adult Mammals: A Study of Inappropriate Terminal Axonal Contacts Albert J. Aguayo The Montreal General Hospital Research Institute, Canada	NBR-657	$42,435 (05/87)	1

Grant Name, Investigator(s) & Institution	Proposal No.	Total Amount & Date Awarded	No. Years Funded
Immunocytochemical Analysis of Localized Extracellular Proteolysis During Neuronal Development M. J. Anderson The University of Calgary, Canada	NBF-665	$40,093 (05/87)	1
International Symposium on Neural Regeneration Frederick J. Seil Portland VA Medical Center	NCR-666	$15,000 (05/87)	Symposium

STATEMENT OF
DAVID W. GORMAN
ASSISTANT NATIONAL LEGISLATIVE DIRECTOR
FOR MEDICAL AFFAIRS
DISABLED AMERICAN VETERANS
BEFORE THE
SUBCOMMITTEE ON HOSPITALS AND HEALTH CARE
OF THE
HOUSE VETERANS AFFAIRS COMMITTEE
September 9, 1987

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

On behalf of the more than one million members of the Disabled American Veterans and its Ladies' Auxiliary, inclusive of the thousands whose disabilities dictate the need to utilize various prosthetic appliances and devices, I welcome this opportunity to relate our views regarding the Veterans Administration's research programs.

Mr. Chairman, I would like to take this opportunity to commend you for the present, as well as historical interest, that this Subcommittee has shown in the arena of VA research, particularly rehabilitation research and development.

As you are aware, Mr. Chairman, the VA's program of research is comprised of three basic elements:

* medical research;
* health systems research and development; and
* rehabilitation research and development

Total Fiscal Year 1987 funding for the VA's research and development program is approximately $213 million. Of that total, $187 million is devoted to medical research; $8.1 million is allocated to fulfill the mission of health systems research and development; and $17.7 million is dedicated to rehabilitation research and development.

Medical research constitutes an important element in the Agency's efforts to furnish quality medical care to this nation's disabled veterans. The value of medical research may be witnessed via the development of new knowledge that tends to improve the diagnosis and treatment of diseases, particularly prevalent in the veteran population. Additionally, it is aimed at assisting the Agency to meet the needs of an ever-changing veteran population.

To meet this goal, the Office of Research and Development encourages research programs focused on health problems affecting the general veteran population. These include: schizophrenia, alcoholism, aging, spinal cord injury and tissue regeneration, post-traumatic stress disorder, Agent Orange, and health problems of female veterans.

Health Systems Research and Development (HSR&D) is intended to support health services and systems research activities to identify options, estimate costs, and provide information to allow clinical and administrative choices to be made among various alternatives.

Established HSR&D priorities are: operational systems, quality of care/quality assurance, cost effectiveness of health care technology, and managerial and clinical decision-making.

Mr. Chairman, it becomes apparent that in the current era of ever-changing methods of health care delivery, the results of

health systems research become invaluable tools to be used in providing quality health care services to disabled veterans.

The mission of the Rehabilitation Research and Development Service (RR&D) is to improve the quality of life and functional independence of physically disabled and handicapped veterans. This mission has become significantly advanced as a result of ongoing research projects in established priority areas of prosthetics/amputations/orthotics, spinal cord injury, and sensory aids.

Without question, Mr. Chairman, when discussing VA research endeavors, it is obvious that the efforts and accomplishments of RR&D have the greatest singular impact upon DAV members and, perhaps, disabled veterans as a whole.

While basic medical research is generic to the entire medical community, whether it be in the private sector or the federal government, it is our strong belief that if it were not for the federal government, specifically the Veterans Administration, rehabilitation research would be virtually non-existent in this country.

The bulk of all research conducted, especially in the private sector, is in the form of basic medical research. This type of research, unquestionably valuable and necessary, is often tedious and time-consuming with the possibility of tangible results becoming manifest only after years of study.

Conversely, rehabilitation research more often produces beneficial results in a comparatively short span of time. This results in disabled veterans, as well as the general population, being able to utilize these research findings and applications in order to lead a fuller, more meaningful and productive lifestyle.

During Fiscal Year 1987, the RR&D Service dedicated $5,369,000 (32.5% of its budget) to support 56 research projects dealing with prosthetics/amputations/orthotics; $3,850,000 (23.3% of its budget) supported 31 projects investigating spinal cord injury; and $3,200,000 (19.4% of its budget) was devoted to projects investigating various types of sensory aids.

Mr. Chairman, in our opinion, the RR&D Service is doing an admirable job meeting their stated mission. However, we remain concerned that they are doing so in spite of restrictive funding. In Fiscal Year 1987, RR&D's funding amounted to only 8.3% of the total research budget, down from the Fiscal Year 1986 proportionate level of 8.4%.

We remain extremely concerned that without adequate funding, the RR&D Service will be placed in a position of falling behind in meeting the rehabilitative needs of disabled veterans.

Mr. Chairman, the DAV strongly believes that RR&D efforts in prosthetics cannot be allowed to remain stagnant or regress. They must, out of sheer necessity, move forward due to the urgency of need which increases substantially when considering the needs of the aging veteran population.

I believe we all realize the tremendous impact and demand for services that the aging veteran population is placing and will continue to place on the VA medical care system within the next few years.

In this context, we should be aware of the following:

* in Fiscal Year 1980, 4,938 amputations were performed by the VA;

* in Fiscal Year 1982, 6,230 amputation were performed; and

* in Fiscal Year 1985, 9,397 amputations were performed within the VA health care system.

Through June 30, 1987, the VA's Prosthetic and Sensory Aids Service had an active workload of over 51,000 amputees that were provided prosthetic services. Additionally, 20,567 paraplegics/quadriplegics and nearly 139,000 hearing impaired veterans were provided some degree of VA prosthetic service.

Clearly, the need for continued improvements and refinements are needed in the areas of diagnostic procedures of diseased limbs, surgical procedures and techniques resulting in amputations and fitting techniques with improved materials used in the fabrication of permanent protheses.

Mr. Chairman, while the DAV supports full funding of the VA's research program and its stated mission, we are, nevertheless, concerned over the seemingly large disparity between funds dedicated to basic medical research versus rehabilitation research and development, as well as health systems research and development.

We remain confident that the VA and, more importantly, disabled veterans are gaining a significant return on the Agency's research dollars in the form of new and improved devices and techniques that aid the more severely disabled.

We do, however, hold to the opinion that more can and needs to be done to restore the VA to a leadership role as far as prosthetic research is concerned.

As you will recall, Mr. Chairman, this Subcommittee held a hearing on May 8, 1984, to receive testimony regarding the VA's research programs on prosthetics and rehabilitation.

At that time, the DAV testified as to what we viewed as a rather severe and counterproductive fragmentation of services that existed by the very structure of the Agency's various programs dealing with prosthetics and related research endeavors.

We find it distressing to again relate our view that the VA's prosthetic and related research programs are not fully in place and functioning as a cohesive, productive entity.

On November 7, 1984, then Administrator Harry N. Walters approved the Department of Medicine and Surgery's plans to implement yet another reorganization of prosthetics and rehabilitation research. This plan was endorsed by the interested veterans' service organizations, primarily the DAV and the Paralyzed Veterans of America.

Briefly stated, the reorganization was to be implemented in two stages, the first of which was to consist of:

* the establishment of a new position -- Deputy Assistant Chief Medical Director (ACMD) for Prosthetic Services, Research and Development -- within the Office of Clinical Affairs;

* administrative reassignment of the Rehabilitation Research and Development Service, functions and positions, from the Office of Research and Development to the Office

of Clinical Affairs under the Deputy ACMD for Prosthetic Services, Research and Development;

* administrative reassignment of the Prosthetics and Sensory Aids Service from the Deputy ACMD for Rehabilitation Services to the Deputy ACMD for Prosthetic Services, Research and Development;

* assignment of program management responsibility for the newly created Special Teams for Amputation Mobility Prosthetics/ Orthotics (STAMP) tc the new Deputy ACMD; and

* establishment of an Advisory Committee to the new Deputy ACMD.

The second phase of the reorganization involved a transfer of functions and positions from the then VA Prosthetic Center, New York, New York, to the Washington, D.C. area. The plan envisioned:

* the creation of a Prosthetics Assessment and Information Center organizationally responsible to the new Deputy ACMD;

* transfer of the Office of Technology Transfer, Rehabilitation Research and Development Service, from New York to the Washington, D.C. area to be colocated with the Prosthetic Assessment and Information Center; and

* establishment of Special Teams for Amputation Mobility Prosthetics/Orthotics (STAMP).

The progress and current state of this reorganization effort can best be described as a "good news/bad news" situation. The implementation of the reorganization constituted a major undertaking from both a logistical and management standpoint. Despite some rather major setbacks and disappointments, much of the reorganization that was agreed upon and approved in 1984 is currently in place and functioning. The organizational structure, established in 1984, remains essentially appropriate today.

The task that remains for the VA is to complete the implementation efforts that have not been fulfilled and to refine some features of the program that have not yet achieved their anticipated benefits.

Some of the problems that still exist today are the result of the complexity of the reorganization itself. However, other problems must be attributed to VA Central Office management, which has failed, on occasion, to provide the necessary leadership, direction and control.

Mr. Chairman, recognizing that problems still exist in the implementation of the reorganization process, the ACMD for Clinical Affairs, established, on May 14, 1987, a Prosthetics Reorganization Post-Implementation Evaluation Task Force. This Task Force consisted on VA Central Office employees and representatives from both the Disabled American Veterans and the Paralyzed Veterans of America. The Task Force was charged to:

* evaluate whether approved recommendations of the 1984 prosthetics reorganization had been effectively accomplished;

* identify unaccomplished recommendations; and

* recommend additional actions necessary to improve the organization's ability to satisfy the mission, goals and objectives.

Mr. Chairman, this Task Force, which I was privileged to be a member of, identified 33 specific recommendations which, in the unanimous opinion of the Task Force, would substantially and meaningfully meet the goals of the proposed reorganization.

Mr. Chairman, nearly all of the 33 specific recommendations have a direct and/or indirect impact, in our view, on the Rehabilitation Research and Development Service concerning its priority areas of interest. It is the DAV's firm belief that the approval and expeditious implementation of an action plan to set these recommendations in motion will bring all prosthetic related services -- including Rehabilitation Research and Development -- into a cohesive unit that can only serve to better fulfill the mission of the VA and the needs of disabled veterans.

In the context of today's hearing, the Task Force identified one issue that we feel is certainly worthy of mention to the Subcommittee at this time.

As a part of the 1984 reorganization, a Memorandum of Understanding was prepared between the then ACMD for Professional Services (currently Clinical Affairs) and the ACMD for Research and Development. The stated purpose of the memorandum was to "...identify specific responsibilities...to insure that the Rehabilitation Research and Development (Rehab R&D) program most effectively meets its assigned mission and the goals of improved operations sought by the organizational reassignment of the Rehab R&D Service to the ACMD for Professional Services in the reorganization of prosthetics...."

That portion of the memorandum regarding budget actions was referred to as an "interim operating procedure." However, the permanent solution was clearly described as "the DACMD/PS&D, working with the ACMD for Professional Services, the ACMD for Research and Development, is charged with making formal recommendations on processes necessary to achieve a separate line item for Rehab Research and Development."

Mr. Chairman, it has been determined this Memorandum of Understanding did not result in its stated purpose. Additionally, that memorandum, identified as containing "interim operating procedures," has existed, unchanged, for nearly three years.

It is our belief that in order to meet the stated purpose of this portion of the reorganization and to streamline the budgetary procedures of the RR&D Service, action must be undertaken by the VA -- with input from all interested parties -- to revisit this issue and develop procedures to insure that an adequate budget process is developed for the RR&D Service.

Mr. Chairman, this concludes my testimony and I would like to extend our appreciation for the opportunity to present our views regarding this vital aspect of the VA's mission of providing quality health care services to this nation's disabled veterans.

SUBCOMMITTEE ON HOSPITAL AND HEALTHCARE

VETERAN ADMINISTRATION REASEARCH

SEPT. 9, 1987

OPENING STATEMENT.

Rep. Claude Harris, Jr.

Thank you Mr. Chairman. I would like to express my continued support for the VA's medical research program. These program serve a dual purpose, not only do they provide a valuable service to the veteran and fulfilling the mission of the VA to provide the highest quality of health care to veterans. But, maybe just as crucial is the enhancement of the public's health at large by the research carried out through this program.

I am also impressed by the Medical Research Program's committment to working with local universities and Medical Schools. In my own state of Alabama, the University of Alabama Birmingham, has shared a long afruitful relationship with VA. Dr. Durwood Bradley, Vice-President of the University in charge of Medical Research has confirmed that over 29 of their medical researchers and fellows are participating in VA research, over a varied spectrum of medical areas. In addition some 2. 9 million

dollars in research funds and equipment have been a part of this program. This type of research not only enhances the VA, but is especially prudent in the stratgey that our nation is using to fight AIDS. The nation will need all of its research sources to fight this disease and the VA'S relationship with university research facilites, like UAB can spearhead the effort.

Again I express my continued support and the support of citizens and veterans in our state.

Thank You, Mr. Chairman.

STATEMENT OF

DENNIS M. CULLINAN, ASSISTANT DIRECTOR
NATIONAL LEGISLATIVE SERVICE
VETERANS OF FOREIGN WARS OF THE UNITED STATES

BEFORE THE
SUBCOMMITTEE ON HOSPITALS AND HEALTH CARE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

WITH RESPECT TO
VA MEDICAL RESEARCH

WASHINGTON, D. C. SEPTEMBER 9, 1987

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

On behalf of the more than 2 million members of the Veterans of Foreign Wars of the United States, I wish to thank you for this opportunity to present our views with respect to the Veterans Administration's Program of Medical Research as required under title 38, USC. The VFW readily acknowledges that by holding this hearing the Chairman and the members of this Subcommittee are demonstrating a sincere on-going concern for the enhancement of medical care provided to veterans by the Veterans Administration (VA) through the workings of its program of medical research.

The Veterans Administration's Department of Medicine and Surgery's most fundamental concern must be with the provision of first-rate health care to this nation's veterans. Thus, its primary involvement must be directly related to health care. However, in order to provide veterans with the very top level of care they have earned, the Department of Medicine and Surgery must have a state-of-the-art and properly funded research program. We must never lose sight of the fact that a viable, top quality health care system cannot exist without both research and education to expand the body of medical knowledge and enhance the provision of care. Research conducted by the Veterans Administration itself along with the research carried out in conjunction with the Department of Defense (DOD) and other entities is an essential component of the total VA health care system that serves the veteran patient both directly and indirectly.

VA research is divided into three major program areas. The first is Medical Research. Medical research is then divided into two broad categories: research on medical, dental and psychiatric problems that are specific to the veteran population and research on general health problems that are particularly prevalent among veterans. Spinal cord injury, ionizing radiation, agent orange, etc. are typically the areas which pertain specifically to the veteran population while alcoholism, various mental disorders and aging are examples of ailments that fall under the category of general health problems. VA clinicians, because of the close relation they enjoy between research and patient care, give the research program a strong clinical emphasis which directly relates to the VA's primary goal of providing quality medical care to the veteran patient. The VFW recognizes that medical research is an essential component of the VA's research program and that it has made invaluable contributions to the welfare of this nation's veterans.

The next major area under the VA's research program is Rehabilitation Research. The veteran who is functionally impaired as a result of an amputation, paralysis or the loss or impairment of his vision, hearing or speech is the direct area of concern for this program. The Veterans Administration's Department of Medicine and Surgery has made enormous contributions in this area. For example, VA studies dealing with the mechanics of human locomotion as well as hand and arm functions have lead to revolutionary improvements in both functional and cosmetic design of artificial limbs. VA research pertaining to limb motion under various conditions provided a scientific basis for the evaluation of stump behavior which enabled surgeons to develop improved amputation techniques to preserve certain muscle and tendon functions thereby allowing the improvement in the performance of prosthesis. The VA's work in this area has had a profoundly beneficial impact throughout most of the world. It is for this reason that the VFW strongly supports the area of rehabilitation research and would strongly caution against redirecting any necessary funds a way from this essential program. The VFW would point out that this particular research area offers little hope of delivering immediate profits within the private sector and were the VA in anyway to diminish its role in this area, this type of research would be seriously reduced.

The third major area under the VA's research program is Health Services Research. This research area is responsible for improving the effectiveness and efficiency of the Veterans Administration's Health Care Delivery System. VA health service's researchers develop and convey information which is intended to aide clinicians, investigators and administrators in selecting the proper medical and administrative means and procedures to best enable them to provide top quality medical care services to the veteran patient. Once again, the VA has made important inroads in this important area.

The VA's efforts in the areas of biomedical, prosthetic and rehabilitation, and health care services research is essential to affording the veteran patient proper care. This research expands the body of medical knowledge thereby increasing our understanding of the nature of various disabilities and diseases thus allowing better diagnoses and treatment. When a high quality research program exists at a given VA medical center, it strengthens health care delivery because of the close association with patient care that takes place at the facility. This leads to the validation of various treatment modalities showing some to be highly effective, others to be less so, and then revealing some to be totally ineffective. This allows for the most effective treatment of the patient and, very importantly, provides the means whereby the veteran patient can be afforded the most modern means of care while reducing the potential for harming him through the injudicious or unnecessary use of certain drugs and other medical techniques. Health care research provides the means whereby we may separate the wheat from the chaff; it determines what is effective and what is not.

In caring for this nation's aging veteran population the VA must quickly devise more effective and efficient means for providing health care, and the VA research program is playing a major role in doing just this. Of paramount concern to the Veterans of Foreign Wars is the proper provision of health care to this nation's rapidly aging veteran population. We would emphasize that our veteran population is aging much more rapidly than the population as a whole. In view of the health problems associated with advancing years, the VA's medical program now, and in the future, must be prepared for increased, diversified and more costly demand for services. It is the VA's research program which will enable the Department of Medicine and Surgery to better and more efficiently answer this challenge. For one, the Geriatric Research, Education and Clinical Centers (GRECCs) are playing an essential role in the further development of the VA's capability to provide maximally effective and appropriate care to older veterans. First implemented in 1975, GRECCs are designed to enhance the system's capability in geriatrics by conducting integrated research, education and clinical care. GRECCs represent a highly innovative and important attempt to bring together in one setting all three sides of the health care triangle, that is, education, patient care and research. This is then brought to bare on the problem of caring for this nation's rapidly aging veteran population. The stated purpose of GRECCs is to develop new knowledge regarding aging and geriatrics, to spread that knowledge through education and training of health professionals and students, and to develop and evaluate alternative models of geriatric care. The VFW recognizes GRECCs as playing an important role in the provision health care to veterans and believes it to be an essential component of the overall VA research program.

Another area of concern pertinent to research is AIDS (Acquire Immune Deficiency Syndrome). The AIDS epidemic continues to grow and has an increasingly serious impact on the VA health care system. And it is only through medical research that this dread disease will be defeated. The VA's research program will play an essential role in both devising the means to cure this disease and the methods to care for those who are now suffering from it.

The VA case load has ranged from 5.3 to 5.8 percent of the total number of cases reported to the Centers for the Disease Control (CDC) or approximately 2,100 cases of AIDS to date. The treatment of AIDS patient is labor and cost intensive. A multitude of medical specialities and subspecialites are involved as well as a large number of staff members from a variety of allied health areas, such as social work service, pharamacy and numerous others. The VA is now engaged in research across the entire spectrum of AIDS from basic science studies of the mechanism of the AIDS virus infection, through clinical trial drugs and the treatment of veteran patients with AIDS. In the area of basic research, VA laboratories are studying the mechanism by which the AIDS virus infects cells.

Despite the tremendous contribution now being made by the Veterans Administration in fighting this dread disease, it is our belief that only additional research will eventually lead to the total elimination of this dread ailment. We believe the VA, with it extensive medical research program, can play a strategic role in the formation of an AIDS policy in a search for a cure. The VFW would further

point out that for the VA to properly fulfill this profoundly difficult and important role, it must be provided appropriate funding and other resources needed to get the job done.

In summation, we would say that just as the VA's program of research is essential to the overall provision of health care to this nation's veterans, the three basic components of this research program: biomedical, prosthetic and rehabilitation, and health care services research are all essential to the overall VA research program. All three deserve and need support and funding from the Congress, and no one of these should be diminished or provided with inadequate monies for the benefit of the other. All three are very important; all three are necessary for the proper provision of health care to this nation's veterans.

Mr. Chairman this concludes my statement, I would be pleased to respond to any questions you may have.

Vietnam Veterans of America, Inc.
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Washington, DC 20009-1125

(202) 332-2700

STATEMENT OF

MARY R. STOUT

PRESIDENT

VIETNAM VETERANS OF AMERICA

HEARINGS ON THE
MEDICAL RESEARCH PROGRAMS
OF THE VETERANS ADMINISTRATION

BEFORE THE
SUBCOMMITTEE ON HOSPITALS AND HEALTH CARE,
COMMITTEE ON VETERANS AFFAIRS
OF THE HOUSE OF REPRESENTATIVES

SEPTEMBER 9, 1987

Vietnam Veterans of America would like to extend its appreciation to the Honorable G.V. "Sonny" Montgomery, Chairman of the Subcommittee on Hospitals and Health Care, for this opportunity to comment on the important issue of the VA's program of medical research.

Philosophically, VVA believes that service-connected disabled veterans should be the highest priority for all veterans programs. While the VA theoretically endorses this priority system, the implementation of VA programs often fail to live up to the theory. No where is this more evident than in the VA's program of medical research.

Of the $212.7 million the VA has received in FY '87 for medical research, nearly 90% ($186 million) is spent on bio-medical research. This type of research is primarily analytical research that may provide beneficial results in the future. This $186 million expenditure does make a contribution to medical science, and some service-connected disabled veterans will benefit as a result. However, we seriously question the priority system of a VA budget that allocates the "lion's share" for programs that have minimal direct impact on improving health care for our nation's veterans.

While VVA acknowledges the importance of this research, we believe that some of these research dollars should be shifted into "behavioral" (covering both prosthetics and health systems) research. This research, which currently receives only slightly more than 10% of the research budget ($17.7 million for

prosthetics R&D and $8 million for health systems R&D in FY '87), needs to be bolstered.

The benefits of prosthetics R&D for service-connected disabled veterans are obvious. And the importance of health systems R&D, while less apparent, is becoming increasingly vital to the well being of the service-connected disabled.

Specifically, health systems R&D holds the most promise for improved care and treatment for veterans suffering from PTSD and other neuro-psychiatric disabilities--an area in which the VA is desperately in need of improvement.

An additional benefit from shifting some VA research dollars away from bio-medical research and into behavioral research may be the reduction of duplicated efforts. Bio-medical research, by its very nature, entails a great amount of overlapping and duplicated work. The National Institute of Health is the government agency which concerns itself with bio-medical research, and we believe it, not the VA, should have the primary responsibility for funding the government's research contribution to medical science. Meanwhile, there exists in the area of prosthetic and health systems R&D, a great need which is not being adequately met by other government agencies in terms of the needs of service-connected disabled veterans.

In summary, VVA believes that the VA medical research program is important and should be maintained. We further believe that while the total dollar figure appropriated for FY '87 may not require enhancement, there is a pressing need to

redistribute the funds among the different research areas.

We believe the needs of veterans, especially service-connected disabled veterans, should be the primary factor in determining the allocation of resources rather than the influence of the scientific medical community.

VVA strongly recommends the current 90-10 split between biomedical and behavioral research should be changed. A 60-40 split would be a far more equitable distribution of the research dollars. We maintain this formula will increase the quality of VA care and the efficiency of VA research while still providing adequate funding for bio-medical research projects.

The American Legion

For God and Country

★ WASHINGTON OFFICE ★ 1608 "K" STREET, N.W. ★ WASHINGTON, D.C. 20006 ★
(202) 861-2700 ★

September 16, 1987

Honorable G.V. (Sonny) Montgomery
Chairman
House Committee on Veterans Affairs
335 Cannon House Office Bldg.
Washington, DC 20515

Dear Mr. Montgomery:

The American Legion appreciates this opportunity to present for the hearing record our views on the issues relating to medical research considered by the Subcommittee on Hospitals and Health Care during its hearing on September 9, 1987.

As has been stated on many occasions in the past, The American Legion is extremely supportive of an intense medical research program within the Veterans Administration, and such a program must be adequately funded in order to ensure that it remains viable.

As you are aware, Mr. Chairman, with regard to the VA/DOD Cooperative Medical Research Program, $12 million of the $20 million authorized has been used to support a number of current research projects initiated by the Veterans Administration which are of particular interest to the Department of Defense. The remaining $8 million will be used in FY 1988 to carry on with these programs.

We understand that new collaborative research proposals have been solicited, and some 100 such proposals are currently being reviewed. The House Armed Services Committee has recommended the continuation of this program, and an additional $25 million in funding for FY 1988. However, neither the Armed Services nor the Appropriations Committees in the Senate have considered the VA/DOD Cooperative Research Program.

The American Legion believes very strongly that such joint efforts between VA and DOD are advantageous to both agencies in addressing some very important issues arising from military service.

Examples of these are exposure to ionizing radiation and Agent Orange, Post-Traumatic Stress Disorder, and other diseases and disabilities. We support funding at the highest possible levels for such studies.

An area of special concern to The American Legion is the apparent disparity in the priority assigned and resources allocated to research efforts in the field of aging in comparison to the levels of activity in other areas of medical research.

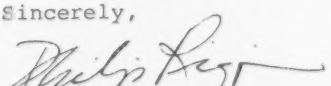
The American Legion does not advocate any diminution in basic research or rehabilitation medicine. There is, collaterally, a very clear and pressing need for VA to address the challenge of meeting the health care needs of the aging veteran in both the near and distant future. Given the Veterans Administration's central role in both research and the training and education of health care professionals, it is important that the agency assumes a leadership role in this regard.

The VA's geriatric research efforts are conducted primarily through its Geriatric Research, Education and Clinical Centers (GRECCs). PL 96-166 mandated the establishment of 25 centers. Unfortunately, to date, only ten GRECCs are in operation with two more centers scheduled to become operational in FY 1988. However, it is our understanding that no additional funding has been provided in the FY 1988 budget for these centers. We fail to see how the GRECC program can fulfill its mission without adequate support and funding.

The American Legion believes that the Veterans Administration must more clearly identify, in a comprehensive plan, exactly how the agency will meet this tremendous challenge of the aging veteran population, with particular attention on the need for increased emphasis on geriatric research.

Mr. Chairman, The American Legion appreciates the interest of the Subcommittee on its views relating to these important issues.

Sincerely,



E. PHILIP RIGGIN, Director
National Legislative Commission

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